AUTORITÀ PER LE GARANZIE NELLE COMUNICAZIONI
AGCOM AUTHORITY

RESOLUTION NO 44/23/CONS

PUBLIC CONSULTATION ON THE DRAFT REGULATION IMPLEMENTING ARTICLES 18a, 46a, 80, 84, 110b, 110c, 110d, 110e, AND 180b OF LAW NO 633 OF 22 APRIL 1941 AS AMENDED BY LEGISLATIVE DECREE NO 177 OF 8 NOVEMBER 2021

THE AUTHORITY

AT the Council meeting of 22 February 2023;

HAVING REGARD TO Law No 481 of 14 November 1995 on '*Rules relating to competition and the regulation of public utility services. Establishment of regulatory authorities for public utility services*';

HAVING REGARD TO Law No 249 of 31 July 1997 '*Establishing the Communications Regulatory Authority and laying down rules relating to the telecommunications and radio-television systems*';

HAVING REGARD TO Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society;

HAVING REGARD TO Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC and, in particular, Articles 13, 18, 19, and 20 (hereinafter also the 'Copyright Directive');

HAVING REGARD TO Law No 53 of 22 April 2021 on the '*Delegation to the Government for the transposition of European directives and the implementation of other acts of the European Union - European Delegation Law 2019-2020*' and, in particular, Article 9 in which the guiding principles and criteria for the transposition of Directive (EU) 2019/790 are set out;

HAVING REGARD TO Legislative Decree No 177 of 8 November 2021 on the '*Implementation of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market and amending Directives 96/9/EC and 2001/29/EC*' (hereinafter also the 'Transposing Decree');

HAVING REGARD TO Legislative Decree No 208 of 8 November 2021 on the '*Implementation of Directive (EU) 2018/1808 of the European Parliament and of the*

Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the consolidated act for the provision of audiovisual media services in view of changing market realities';

HAVING REGARD TO Law No 633 of 22 April 1941 on the '*Protection of copyright and other rights related to its exercise*' (hereinafter also the 'Copyright Law' or 'LDA');

HAVING REGARD TO the powers conferred on the Authority by Articles 110b, c, d and e of Law No 633 of 22 April 1941, introduced by Article 1(1)(q) of Legislative Decree No 177 of 8 November 2021;

HAVING REGARD TO, in particular, Article 110e of the Law of 22 April 1941, which entrusts the Authority with the task of adopting a dispute settlement regulation concerning transparency obligations and the contractual adjustment mechanism as set out respectively in Articles 110c and 110d of the same law;

HAVING REGARD TO, moreover, Article 180b of Law No 633 of 22 April 1941, as introduced by Article 1(1)(s) of Legislative Decree No 177 of 8 November 2021, under which the criteria for determining the greater representativeness of sectoral collective management organisations, the advertising measures aimed at informing of the possibility of granting licences, as well as the procedure by which beneficiaries may exercise the envisaged right to exclude works or other materials protected by the extended collective licensing mechanism referred to in paragraph 1 of that Article, are laid down by the Authority's regulation;

HAVING REGARD TO, also, Articles 18a, 46a, 80 and 84 of Law No 633 of 22 April 1941, as amended by Article 1(1)(a), (f), (l) and (m) of Legislative Decree No 177 of 8 November 2021, pursuant to which the Authority, in the absence of an agreement between the parties, shall establish, in accordance with the procedures provided for in the relevant regulation, the compensation due for the remuneration of the rights provided for in the same articles;

HAVING REGARD TO Law No 317 of 21 June 1986 on '*Provisions implementing European regulations on European standardisation and the procedure for the provision of information in the field of technical regulations and rules on Information Society services*';

HAVING REGARD TO Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (hereinafter also the 'Barnier Directive');

HAVING REGARD TO Legislative Decree No 35 of 15 March 2017, on the '*Implementation of Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market*', (hereinafter also the 'Decree');

HAVING REGARD TO Resolution No 396/17/CONS of 19 October 2017, on the '*Implementation of Legislative Decree No 35 of 15 March 2017 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market'* (hereinafter also the 'Resolution'), and in particular Article 1(3) establishing '*the technical panel intended to adopt common solutions between the various parties operating in the field of related rights with regard to specific issues related to the effective implementation of the provisions contained in Legislative Decree No 35 of 15 March 2017*';

HAVING REGARD TO Decree No 111 of the Ministry for Cultural Heritage and Activities of 26 February 2019, on the '*Definition of the minimum common procedures for the electronic provision of information by collective management organisations and independent management bodies, within the meaning of Article 27(2) of Legislative Decree No 35 of 15 March 2017*';

HAVING REGARD TO Decree No 386 of the Ministry for Cultural Heritage and Activities of 5 September 2018, on the '*Implementation of Article 49 of Legislative Decree No 35 of 2017 transposing Directive 2014/26/EU on the management of copyright and related rights*';

HAVING REGARD TO Resolution No 223/12/CONS of 27 April 2012, on the '*Adoption of the new Regulation on the organisation and operation of the Authority'*, as last amended by Resolution No 434/22/CONS;

HAVING REGARD TO Resolution No 410/14/CONS of 29 July 2014, on the '*Rules of Procedure on administrative fines and commitments and public consultation on the document containing guidelines on the quantification of administrative fines imposed by the Communications Regulatory Authority*', as amended, most recently, by Resolution No 437/22/CONS;

HAVING REGARD TO Resolution No 220/08/CONS of 7 May 2008, laying down '*Procedures for the performance of the Authority's inspection and supervisory functions'*;

HAVING REGARD TO Resolution No 107/19/CONS of 5 April 2019, on the '*Adoption of the Regulation on the consultation procedures in proceedings falling under the Authority's competence*';

IN VIEW OF the principles enshrined in the case-law of the Court of Justice of the European Union and the European Court of Human Rights and Fundamental Freedoms on the protection of copyright and on electronic commerce;

WHEREAS the Authority has made requests for preliminary information in order to acquire, from the stakeholders addressed by the provisions of Articles 110b, 110c, 110d, 110e and 180b of the Copyright Law, information and elements useful for deepening the dynamics of the sector;

WHEREAS:

- Legislative Decree No 177 of 8 November 2021 transposed into Italian law the Copyright Directive by introducing new provisions in the LDA. With this amendment, the Legislator intended to confer on the Authority a number of new regulatory, supervisory and sanctioning powers, as well as dispute resolution in the field of intermediation of copyright rights and related rights;
- this regulatory intervention is embedded in a framework of primary and secondary rank rules introduced successively over time also due to the technological and market evolution of the sector as a whole;
- this regulatory complex is based on two laws: the Copyright Law (Law 633/41), as amended by Legislative Decree No 177/2021, and Legislative Decree No 35 of 15 March 2017, transposing European Directive 2014/26/EU (the Barnier Directive), with regard to the collective management of copyright and related rights;
- in particular, with Legislative Decree No 35/2017, the Authority has been empowered to supervise compliance with the provisions introduced therein, in order to ensure the smooth functioning and efficiency of the management and intermediation of such rights. Article 40 of the Decree provides that the Authority *shall monitor compliance with the provisions of the Decree by exercising powers of inspection and access and acquiring the necessary documentation*';
- the Authority has implemented the Decree by means of a specific Regulation, adopted by Resolution 396/17/CONS, whose purposes and scope, as defined in Article 2, are limited to the activities provided for in the primary legislation;
- the Decree also required some significant secondary rank legislative interventions by the Ministry for Cultural Heritage and Cultural and Tourism Activities, now the Ministry for Culture. In particular, a decree is provided for in Article 27(2) in order to define the minimum common procedures relating to the digital provision of information on works, or the types to which they refer, and other materials managed by collective management organisations (OGCs) and independent management bodies (EGIs), the rights they represent, directly or on the basis of representation agreements and the territories covered by those agreements. The Ministerial Decree was adopted on 26 February 2019 (Ministerial Decree No 111 of 2019);
- another decree, again to be adopted by the Ministry for Cultural Heritage and Cultural and Tourism Activities, now the Ministry for Culture, is provided for in

Article 49(2) in order to lay down implementing provisions on criteria for the allocation of remuneration due to artists, interpreters or performers (AIEs). The decree was adopted on 5 September 2018 (Ministerial Decree No 386 of 2018); however, some implementation difficulties have made its revision necessary, which is still ongoing at the Ministry for Culture, with the help of a special committee set up within the Permanent Advisory Committee on Copyright;

- the implementing provisions of the aforementioned Ministerial Decree No 386 of 2018 replaced those contained in the Prime Ministerial Decree of 17 January 2014, in accordance with Article 49 of the Decree;
- in implementing the rules introduced by the Decree transposing the Copyright Directive, the Authority followed an organic and systematic approach, taking into account the different regulatory sources conferring powers on Agcom, in order to contribute to the effective functioning of the sector;
- technological evolution has profoundly affected the media ecosystem, resulting in a series of consequences also in the field of the intermediation of intellectual property rights and in particular in the relations between beneficiaries and transferees, licensees and sub-licensees, with particular reference to users. The new forms of reproduction, dissemination, provision and communication to the public, made possible by the spread of broadband internet connections, have given rise to new contexts and methods of use and new business models, thus also configuring new ways of exploiting the rights of works;
- the market has been enriched with services offered by IP-based platforms and the channels through which content can be conveyed have multiplied. At the same time, new operators have emerged. The services in question allow the consumption of content on demand in certain cases upon payment for the individual content, and in other cases, by paying a fixed monthly subscription, users are allowed unlimited access to the entire catalogue offered by the service;
- this dynamic affects authors and artists, interpreters or performers (hereinafter, also AIEs), as well as collective management organisations representing their interests. These beneficiaries, although they may rely on more widespread disseminations of works, are nevertheless faced with the need to deal with new entities, often established in other Member States, which also has an impact in terms of reporting information and acquisition of data on their use;
- one element that characterises the Italian experience in the European landscape lies in the high number of collective management organisations and independent management entities present in Italy, as certified by the list drawn up by Agcom pursuant to Article 40(3) of Legislative Decree No 35/2017. Decree-Law No 1 of 24 January 2012, converted, with amendments by Law No 27 of 24 March 2012, initiated the liberalisation of the administration and intermediation of rights related to copyright (Article 39(2)), thus establishing freedom of choice with regard to intermediaries for beneficiaries. Subsequently, by Decree-Law No 148 of 16 October 2017, converted with amendments by Law No 172 of 4 December 2017,

this liberalisation was also extended to copyright intermediation, by amending Article 180 of the LDA, which provided for the monopoly of the Italian Society of Authors and Publishers (SIAE). According to the new wording of Article 180, intermediation '*for the exercise of the rights of representation, performance, acting, broadcasting, including communication to the public by satellite and mechanical and cinematographic reproduction of protected works*' may be exercised by persons other than SIAE and, in particular, by other collective management organisations (OGCs). A peculiarity of the Italian system, compared to most other countries, is the co-presence of several bodies or entities in the same sector, for the intermediation of the same categories of rights;

- in the audiovisual sector, the presence within the same work (such as the cast of a film) of beneficiaries registered with different collective management organisations, or even not registered with any organisation, may cause difficulties for the user, where the organisations do not adopt the same parameters to identify beneficiaries;
- among the objectives pursued by the Copyright Directive, it also seeks to address the difficulties arising in the conclusion of agreements for the use of audiovisual works, in particular European ones, due to problems related to the licensing of video-on-demand services. In order to facilitate the conclusion of agreements between the parties and the granting of licences, Article 13 of the Directive provides for Member States to establish a negotiation mechanism allowing the parties to avail themselves of the assistance of an impartial body or mediators;
- with particular reference to the Italian context, the national legislator, by means of Article 110b of the LDA, which transposed Article 13 of the Directive, identified Agcom as an impartial body that two parties encountering difficulties in reaching a contractual licensing agreement for the use of audiovisual works on video-on-demand services may contact;
- in referring to '*video-on-demand services*', the regulation does not clarify, in the absence of a specific definition, which category of services should be referred to. In the Authority's view, the subjective scope of that article can only be identified with that of '*audiovisual media services on demand*', as defined by Article 3(1)(q), of Legislative Decree No 208 of 8 November 2021, a category to which those subjects who are not established in Italy, but who address the Italian public, also belong, since, in terms of copyright, the principle of the country of origin cannot apply. The combined reading of the Copyright Directive and the AVMSD Directive (Directive 2010/13/EU, as amended by Directive (EU) 2018/1808), on the contrary, leads to the exclusion of content sharing services and, in particular, video sharing service platforms, from this mechanism;
- albeit with specific reference only to the field of video-on-demand services, the legislator has therefore invested Agcom with the role of assisting in negotiations, which is unprecedented in the field of copyright and related rights. The negotiation assistance required by the regulation is not comparable to the resolution of a dispute, since in this case there is negotiation for licensing, which must be without prejudice

to the negotiating freedom of the contractors, and which also includes the possibility of not concluding the agreement, since it is clearly not possible to provide for an obligation to contract. Indeed, recital 52 emphasises that '*Participation in the negotiation mechanism and the subsequent conclusion of agreements should be voluntary and should not affect the contractual freedom of the parties*';

- the Italian regulation has provided the right to trigger the mechanism to each of the parties, who can therefore request the assistance of Agcom even independently of the will of the other party, it being understood that the other party has no obligation to take part in that mechanism;
- in this sense, in view of the rationale underlying the directive, which seems to envisage a system in which both parties jointly and by mutual agreement seek assistance, it is considered that the request for assistance addressed by the party to Agcom must contain adequate documentation, capable of demonstrating the actual existence of the negotiation, its state of progress, and the existence of objective difficulties in reaching an agreement. This is above all in order to limit the use of the mechanism only to cases where negotiations have already started, thus clarifying that it is not possible to follow up, through the negotiation mechanism assisted by the Authority, the mere request of a party wishing to enter into negotiations with the other party;
- also on the basis of Recital 52, it is important to guarantee the negotiating freedom of the parties and to define the timing and duration of the negotiation assistance. In this respect, given that the time for reaching an agreement is not foreseeable *ex ante*, since there are multiple factors that can intervene during negotiations, slowing it down or making it more complex, it seems reasonable to provide for, following the first round of discussions, convened within thirty days from the receipt of the request for intervention, a ninety-day window to allow the parties to continue the discussion, with the help of the Authority. During this period, the parties may request further meetings. At the same time, the Authority shall formulate its proposals for the successful conclusion of the negotiations between the parties, attaching them to the minutes of the discussion sessions held. The reference to '*determination of the compensation due*', contained in Article 110b, but not included in the text of the Directive, is considered to have a mere indicative value, and is not binding in any way;
- the information and communication obligations and the contractual adjustment mechanism referred to in Articles 110c and 110d, as well as the related dispute resolution procedures referred to in Article 110e, transpose Articles 19, 20 and 21 of the Copyright Directive. Those rules should be read in the light of Article 18 of the same Directive establishing the principle of adequate and proportionate remuneration and which in fact complements the '*set*' of provisions of Chapter III on '*Fair remuneration for authors and AIEs in usage contracts*'. The Copyright Directive clarifies (see recitals 72 and 75) that authors and AIEs, are in a weaker

contractual position than the parties to whom rights have been licensed or transferred and their assignees;

- in particular, recital 75 identifies in this weak position the reason for the need for authors and AIEs to have adequate and accurate information on the use of works and on the revenues generated by their use, in order to quantify the economic value of the rights assigned or transferred and to verify the adequacy of their remuneration with that received at the time of the grant or transfer, without prejudice to the commercial secrets of the persons to whom the rights and their assignees have been licensed or transferred;
- in view of these considerations, Article 19 of the Directive establishes the right of authors and AIEs to receive such information from transferees and licensees, or from assignees. The right to receive the information may also be exercised in relation to sub-licensees, if the first contractual counterparty is unable to provide it, or to provide it only in part, subject, however, to the formulation of a specific request;
- the need of the author and the artist, interpreter or performer to receive the information must, however, be reconciled with the complexity of the '*chain of rights*', i.e. with the articulation of the process of the economic use of the work and of the artistic performance, which originates from the time of the assignment or transfer of the rights to the party with whom a contract is concluded. In fact, the economic use of a work depends to a large extent on the sector of reference and can last for a very long time, which is not foreseeable;
- it must be borne in mind that the obligations introduced by Article 110c do not provide for any distinction or limitation with respect to its scope, are applicable equally to all types of relationship between the transferees or licensees of rights and authors and AIEs (even where they are represented by an OGC or EGI), attributable to very different areas of use of rights;
- in the audiovisual sector, for example, the right of economic use of the cinematographic work lies with the organiser (Article 45 LDA), while authors and AIEs assign their rights to the conclusion of the contract for the production of the work. In most cases, however, the producer will need to sub-license those rights to another entity (e.g. a media service provider) who makes it available and communicates it to the public;
- in the field of musical works, the LDA provides that '*The exercise of the rights of economic use rests with the author of the musical part, without prejudice to the rights arising between the parties from the collaboration*' (Article 34). The author or authors sign a '*music publishing contract*', which is not regulated in the LDA and is of a nature other than a '*publishing contract*' (see *below*), in which all rights of economic use of the work (generally for all territories) are granted (for a duration that varies depending on the contract), including, for example, mechanical reproduction rights (which include the right to record and reproduce on different media), the public performance right, and the synchronisation right. The transfer

takes place after payment and takes the form of the publisher's commitment to publish and promote the work, bringing it to the attention of the public, as well as to give the authors a share of the proceeds generated by the use of the work (generally the publisher retains twelve twenty-fourths, while the authors of the musical part and the text divide the other twelve according to what is agreed between them). The parties generally agree with regard to which of the rights assigned by the author should be entrusted to a collective management organisation, responsible for collecting the proceeds from the use of those rights and giving them to those entitled. In addition to this, there is the recording contract, which is the one concerning the scheduling of the artistic performance, generally concluded between the AIE and the phonogram producer;

- in the field of literary works, the author grants the right to publish in print his/her intellectual work through the publishing contract governed by Articles.118 et seq. (Section III of Title II(d) of the LDA). The contract may concern '*all or some of the rights of use accruing to the author in the case of publishing, with such content and for such duration as may be determined by the law in force at the time of the contract*' and '*Unless otherwise agreed, exclusive rights shall be presumed to have been transferred*' (Article 119);
- from this point of view, particular account must be taken of the nature of the obliged entity and its effective ability to report on time to authors and AIEs, satisfying all the information required by the standard. It must be borne in mind that the different positions occupied in the chain of rights by the parties concerned by the information obligations entail a different relationship with authors and AIEs, which must also be reflected in the definition of those obligations;
- Article 110c of the LDA, unlike the provision of the Directive it implements, establishes the transmission of information as an obligation for all transferees and licensees, and their assignees, rather than as a right of authors and AIEs.
- on the one hand, it can be said that the first contractual counterparties have a direct relationship with the authors and AIEs who have signed the contract of their works or the scheduling of their artistic performances and it is presumed, therefore, that they are in the best position to be able to provide the necessary information. However, on the other hand, it is true that the amount of information to be provided and the large number of persons to turn to could make this operation burdensome. For this reason, it seems reasonable to set a time limit within which the first contractual counterparties are proactively required to report half-yearly. After that period, the information, which must in any case be made available, shall be the subject of a specific request by the author or the AIE entitled to it. Moreover, with the passage of time, the life cycle of the work could be exhausted or it could generate a so-called 'long-tail' of lower economic value, if not negligible, uses so that the same information on such uses would lose value. The Authority considers that a reasonable period of time could be three years;

- as regards, on the other hand, relations with sub-licensees, if they are subject to the obligation to provide information even in the absence of a '*specific request*', the mechanism could be disproportionate, as sub-licensees may encounter difficulties in identifying and thus informing authors and AIEs who hold the rights for a particular work, not having the same contractual relationship with the beneficiaries as the first counterparties. The need for the information to be received '*upon request*' is moreover recalled by the last sentence of the third paragraph of Article 110c of the LDA, and by Article 19(2) of the Copyright Directive;
- the information must be provided by the sub-licensees, identified on the basis of the information provided by the first contractual counterparty who knows their identity, having sub-licensed the rights to them. However, sub-licensees could potentially be difficult to reach in order to obtain the information (such as the case where a producer sub-licenses rights to a foreign media service provider), which could constitute an obstacle to obtaining information. For this reason, it is considered that the provision under which the request for information can also be made by the beneficiaries indirectly through the contractual counterparty, provided for by the legislator only for cinematographic and audiovisual works, should be extended to all works;
- in theory, the regulation appears to apply to a wide range of licensees and sub-licensees, which includes, for example, all public establishments, businesses, and accommodation facilities publicly performing, showcasing or broadcasting works and other protected materials. Each of these methods, however, entails different degrees of knowledge and control over the content used and consequently different degrees of availability of the information to be communicated to beneficiaries. In this sense, reference is made firstly to what has already been stated by the Authority in its Resolution No 396/17/CONS, with regard to the notion of user, with particular reference to the regulation of the information obligations already provided for by Article 23 of the aforementioned Legislative Decree No 35/2017. In that provision, the Authority clarified that the reporting obligation must fall on those entities that actually have the necessary information available. Those who, although they have signed licensing agreements for the use of works, do not however have a real knowledge of their characteristics should not be subject to these obligations, always in accordance with the principle that the administrative burden of providing information should not be disproportionate;
- more generally, it should be noted that the issue of the transmission of information on the use of works plays a central role in the dynamics relating to the intermediation of copyright and related rights. Even before the entry into force of Article 110c, Article 23 of the Decree, which transposes, by extending its scope, Article 17 of the Barnier Directive, imposes on users the obligation to provide to the OGC and EGI the relevant information at their disposal that is necessary for the collection of royalties and for the distribution and payment of amounts due to rights owners and concerning the use of protected works. This information concerns, both

the characteristics of the work, in order to allow its identification, and the data relating to its use (date or period of communication, dissemination, representation, distribution or marketing or public disclosure in any other manner);

- in fact, the coexistence of two rules – Article 110c of the LDA and Article 23 of the Decree – on the same subject requires a coordinated and systematic interpretation of those rules that takes into account the difficulties encountered in implementing Article 23 of the Decree, with particular reference to the proportionality of the reporting obligation, the type of information to be transmitted, the logical and temporal succession of the steps in the transmission of information, and the need to coordinate the obligation with that laid down in Article 27 of that Decree;
- the two rules have a different subjective scope, since the disclosure obligation in Article 23 of the Decree falls on users, while that of Article 110c of the LDA applies to all transferees or licensees of rights. Nevertheless, this provision is also extended to all assignees, and furthermore paragraph 3 of Article 110c clarifies that the information is also due from all sub-licensees to whom the rights have been assigned or transferred by the first contracting party or by another licensee. It is therefore considered that the group of entities required to report information pursuant to Article 110c is broader, and that it contains the sub-set of users, who could economically exploit the rights to the works and artistic performance either by virtue of an agreement concluded directly with the author or with the AIE, or – more frequently – as a result of contracts with the first contractual counterparty or with other subjects to whom the rights were subsequently licensed;
- the information referred to in Article 110*c* may also be transmitted through the OGCs and EGIs. In this sense, the article seems to bring this type of data transmission even closer to that referred to in Article 23 of the Decree, pursuant to which users send information on the use of works to collective management organisations and independent management bodies;
- however, in addition to the subjective scope of application, the disclosure obligations under Article 110c of the LDA and those arising from Article 23 of the Decree present additional deviating elements. In particular, the different reporting period (at least half-yearly, in the first case, and 90 days from the use of the works, in the second); the type of information; penalties (up to 1% of turnover, for non-compliance with Article 110c of the LDA and between EUR 20 000 and EUR 100 000 for infringements of Article 23 of the Decree);
- it is therefore important to ensure that Article 110c is implemented in order to limit interpretative uncertainties. In this respect, the objective of the proposed regulation annexed to this resolution is therefore to provide more certainty in the application of these obligations;
- for all the foregoing, it is considered appropriate to provide that if there is already a license agreement or contract that provides for periodic reporting on the use of works and artistic performances, and on the remuneration due between the licensee or sub-licensee and an OGC or an EGI, the disclosure obligations provided for in

Article 110c with respect to authors and AIEs registered with that OGC or EGI must be considered to be already fulfilled. Reporting to an OGC or an EGI achieves the objective set by the legislator, since such membership of an OGC or an EGI guarantees the author or artist, interpreter or performer that they will receive from the body they are members of the relevant information on the economic use of their works and their rights;

- this provision is, moreover, consistent with the provision of Article 19(6) of the Copyright Directive, according to which '*Where Article 18 of Directive 2014/26/EU is applicable*', the disclosure obligations should not apply to contracts concluded with OGCs and EGIs;
- it is essential, in fact, to frame both the disclosure and communication obligations arising from Article 23 of the Decree and those arising from Article 110c of the LDA within the logic of contractual negotiations between the beneficiaries, on the one hand, and those to whom they are assigned or transferred, or those who use the works or artistic services for economic purposes, on the other. In other words, with particular reference to the information transmitted to collective management organisations, its transmission must necessarily be read in a logic of exchange between the parties, which cannot be regarded as an end in itself, but must be functional to reaching an agreement. In this respect, the modalities and technical standards through which the exchange is articulated become essential, as each of the parties must play an active role in facilitating the transmission of information and in putting the other party in a position to proceed. Information on the repertoire administered by a collective management organisation is essential to enable a user to provide exact information about the works used in which rights of persons registered with that organisation are involved. The sequence of steps by which the exchange of information takes place is a well-established aspect in many negotiation practices already, even in the absence of a legal framework of reference. For this reason, on the basis of Article 27 of Legislative Decree No 35/2017, it is considered that the OGCs and EGIs must provide, on the basis of an appropriately justified request, information on the managed repertoire (both in terms of works managed and rights represented);
- in the light of the very broad scope of Article 110c, particular attention should also be paid to ensuring the proportionality and effectiveness of the obligations in question, in order to ensure a high degree of transparency in each sector, also in view of the effects resulting from the potential number of beneficiaries to whom the assignee or licensee must provide regular reporting;
- in these respects, a first fundamental aspect to be taken into account is the confidentiality of the information. The broad scope of the obligation in question requires particular attention to be paid to the protection of sensitive data, which constitute business and commercial secrets. Such information should be protected by appropriate agreements, which balance the right of authors and AIEs to receive information, with the need of transferees and licensees, and their assignees, to

restrict the circulation of sensitive information, including in the presence of a large potential audience of recipients;

- it is also relevant to point out that the obligation to transmit information is closely linked, on the one hand, to being in actual possession of it and, secondly, to the actual existence of updates. Although the provision prescribes a regularity of six months (which is more stringent than that provided for in the Directive), in fact, this does not necessarily mean that the transferee or licensee receives periodic updates on the use of a work. Consider an audiovisual producer who, not having sold the rights to a particular work in perpetuity, has in any case licensed them to a licensee (for example a media service provider), for a certain number of years. In this case, the subject in question, after informing the authors and the AIEs – who had originally assigned it their rights – about the revenues generated by the license, may for a long period of time have no further information about the use of that work. The reporting burden could become excessive in this case;
- finally, two additional aspects must also be taken into account in order to maintain the proportionality and effectiveness of the reporting obligation. Firstly, the reporting burden should not be disproportionate to the actual level of revenue generated by the use and, in duly justified cases, the obligation should not be imposed. Secondly, if the contribution of the author or AIE is insignificant, the obligation to report would result in an excessive burden and should not be imposed for this reason;
- in order to protect authors and AIEs, Article 110d, in implementation of Article 20 of the Copyright Directive, provides for the possibility of requesting further remuneration if the agreed remuneration is disproportionately low compared to the revenues generated over time from the use of the work or artistic performance. This is because certain contracts are long-term, making it difficult for authors and AIEs to renegotiate their terms with users. This opportunity is defined by the Directive as a '*contractual adjustment mechanism*';
- like the disclosure obligations referred to in Article 110c, the contractual adjustment mechanism must also be closely linked to the second paragraph of Article 107, which in turn introduces into Italian law the provisions of Article 18 of the Copyright Directive on appropriate and proportionate remuneration of authors and AIEs. Article 107(2), in fact, focuses on the characteristics of remuneration at the time of licensing or transfer of the rights for the use of their works, and therefore on the relationship between authors and AIEs and their first contractual counterparts, ensuring that it is fair, proportionate and commensurate with revenues. The adjustment mechanism comes into play, however, at a later stage, namely when, after some time has elapsed since the initial assignment or transfer, the revenues generated by the use have turned out to be higher than expected, so that the remuneration of the author or the AIE has become disproportionately low compared to what was originally agreed upon;

- Article 107(2) did not assign any role to the Authority, although its implementation may have effects in relation to the provisions of Articles 110c and 110d, since the contractual conditions for the works and artistic performances governing the relationship between authors and AIEs and their counterparties, based on the principle of fair and proportionate remuneration, will be decisive both in the transmission of the relevant information and in view of the possible adjustment of the contract;
- first, it should be noted that the provision of Article 107(2) already lays down a principle of proportionality: the remuneration that the author and the AIE receive for licensing or transferring the rights to their works and artistic performances must be directly proportional to the revenues generated. Although it is not the Authority's responsibility to intervene on this matter, since there is, moreover, no legislative provision in this regard, it seems logical to consider that the affirmation of this principle and its correct application represents in itself a protection for the author and the AIE, ensuring that they receive an adequate share of the proceeds of the work, where the initial agreement provides for the payment of a percentage of the revenues generated. Any success of the work that exceeds expectations will in fact result in a proportional increase in the remuneration of authors and AIEs;
- on the other hand, the adjustment mechanism seems suitable for use in situations where the remuneration of the author or the AIE has been agreed on the basis of a fixed fee (a lump sum);
- however, even where the remuneration agreed by the author or the AIE complies with the provisions of Article 107(2), it seems essential to verify whether the contractual agreements providing for remuneration commensurate with revenues continue to apply even if the rights of a work have been transferred by the first contractual counterparty to another party definitively. The author or the AIE should also be able to demand the payment of remuneration commensurate with the proceeds from the new owner of the rights of the work's economic use. In these circumstances, therefore, the request for contract adjustment appears legitimate;
- for the correct application of the contractual adjustment mechanism, it is necessary to establish, first of all, the actual existence of an imbalance between the revenues generated over time from the work in question and the remuneration initially agreed between the author or AIE and the contractual counterparty. In order to make this assessment, on the one hand, it is necessary to know the revenues resulting from the use, the weighting of which can be calculated on the basis of the information that the author or the AIE can derive from the periodic information referred to in Article 110c. On the other hand, however, it is also important to obtain information concerning the production of the work, and in particular the costs incurred in realizing it, since it will be disproportionate when the revenue is unexpected. With particular reference to some sectors, such as audiovisual productions, it is in fact likely that a work that has made use of significant economic means for its production has a greater possibility of generating revenues, compared to another

produced with few resources. If the work achieves significant economic success over time, the revenues generated could, in the first case, be more related to the investments made, whereas, in the second case, they could be a consequence more closely linked to the contribution of the author or the AIE. In the latter case, therefore, the claim for an adjustment of the remuneration, in light of an unexpected economic result, might be more relevant. In this sense, the adjustment must also take into account the role played by the author or the AIE, as well as specific industry practices and the particular circumstances of each case. Furthermore, it is reasonable to consider that the adequacy of the originally agreed remuneration is assessed in the same way as the production's budget; therefore, in the case of a work carried out with a modest budget that then achieves considerable success, the flat-rate fee may be adequate at the time the contract was concluded, but become inadequate in light of the unexpected revenues that the work has allowed the producer to realize;

- for the reasons set out above, the Authority considers that the calculation of the contractual adjustment cannot have a retroactive effect with respect to the entry into force of the rules in question, also in light of the provisions of Article 3(1) of Legislative Decree No 177/2021;
- the institution of the contractual adjustment must necessarily be coordinated with the pre-existing regulatory framework on which it is based and, in particular, with other mechanisms aimed at guaranteeing the author and the AIE, in certain sectors, additional remuneration over and above that originally agreed. In particular, the appropriate and proportionate remuneration, previously referred to as '*fair compensation*', provided, for example, for authors (Article 46a) and for AIEs (Article 84) of cinematographic and similar works, paid by users (more correctly, by broadcasting organisations) may, in fact, be considered as alternative to the contractual adjustment, reproducing certain fundamental characteristics. In fact, since the compensation is due '*for each use of cinematographic and similar works*', the beneficiaries receive remuneration according to the number of uses (television broadcasts, views within a catalogue) that are made over time, and in proportion to its success (the greater the broadcasts or views, the greater the compensation). The user revenues that are used as a basis for calculating the appropriate and proportionate remuneration (fair compensation) already represent a revenue generated over time from the use of the works and should therefore not be considered for the purposes of the contractual adjustment, in order to avoid double charging the same subjects;
- Article 12 of the Copyright Directive concerns so-called '*collective licensing with an extended effect*' and has also been transposed with Article 180b of the LDA introduced by Legislative Decree No 177/2021. Specifically, the provision provides that for the so-called remuneration rights (relating to Articles 18a, 46a, 73, 73a, 80 and 84 of the LDA), the licensing agreements, for the use of works or other materials, signed by the three most representative bodies for each sector shall also be effective with regard to subjects not associated with any OGC (so-called stateless

artists). The Authority, by its own regulation, must determine the '*criteria for determining the greater representativeness of collective management organisations in the sector*', as well as the regulation of publicity measures with which to inform of the possibility of granting the aforementioned licences, as well as the so-called 'opt-out' procedure;

- the types of rights referred to in Article 180b *de facto* refer to remuneration rights, which as such are not the subject of licences, but of remuneration contracts;
- in a system of competition between different entities operating in the intermediation sector, it is essential to have objective and shared parameters to establish the balance of power between the various entities operating in the market, certifying unequivocally, at regular intervals, what should be considered the '*market share*' of each entity in a given sector. Article 180b thus introduces a more general principle for determining the representativeness of collective organisations in the light of licensing negotiations and the indication of tariffs;
- in this regard, in order to carry out the aforementioned tasks attributed to the Authority by the law in the first instance, it is considered that the categories of owners of rights must be defined, taking into account the elements deriving both from the rules and from negotiation practices, considering both the characteristics of the subjects (authors, AIEs, phonogram producers, etc.), and the type of works intermediated (audiovisual, musical, etc.). Secondly, it appears necessary to identify the different parameters that contribute, beyond the mere numerical data consisting of the counting of associated subjects, or mandates attributed, to the determination of representativeness;
- with regard to the identification of the categories of owners of rights, in light of the experience gained, it is considered that the very concept of the category of rights owner cannot be considered immutable over time and it is appropriate to provide that an assessment on the matter may be carried out by the Authority periodically, including to keep track of possible updates, on the basis of the information communicated by the same bodies. Indications to this effect should in any case be explicitly provided for in the statutes of the bodies and made known in the general conditions of membership that they propose to the beneficiaries;
- on the basis of the assessment of the categories, the Authority can therefore proceed with determining the most representative bodies. In general, the criteria for determining representativeness may vary depending on the characteristics of the agreements that the bodies enter into with users;
- in some cases, in fact, those agreements provide that the calculation of the remuneration due to the OGC (and possibly also to an EGI) from the proceeds takes into account and is commensurate with the actual use of the works by the user;
- in these analyses, different values are, as a rule, attributed according to the role predominantly played within the works whose rights they are asked to administer (whether they are a primary or a supporting artist, whether they are an actor or a voice actor, whether they are an author or an adaptor). It seems reasonable to expect

this assessment to be carried out on a regular basis (e.g. yearly), based on objective and shared parameters, either on the basis of the statements provided by each OGC, or by using information in international reference databases, such as the IPI (Interested Party Information, for copyright) or SCAPR (Societies' Council for the Collective Management of Performers' Rights, for related rights);

- as a result of this operation, it is therefore possible to determine, for that specific user and for that specific year, how '*representative*' collective management organisations with which agreements have been signed are;
- more generally, the amount of fees brokered and invoiced is certainly an objective parameter. There are, however, some aspects that need to be taken into account in its concrete implementation. First, where the OGC operates in more than one category, it is necessary to consider separately the amount of the fees administered in each of them, in order to have comparable perimeters between different OGCs. Secondly, it seems appropriate to indicate that the amounts must be derived from the OGC's balance sheet, although with reference to the contracts actually signed with users. Finally, it is considered appropriate to carry out the assessment over a three-year period to take into account the cyclical nature of collective management;
- however, the criterion described above cannot be considered in the absolute sense for the assessment of representativeness. In fact, as explained above, this assessment could also be used in the context of negotiations between OGCs and users, both in the case of '*non-analytical*' users, and in all those cases where so-called *blanket* licenses are negotiated, that is, permitting access to a particular repertoire (for example, the music licensed by the SIAE) in exchange for a fixed annual fee. In all these circumstances, the use of representativeness percentages would affect the extent of the economic value of the licence, which in turn would be used to determine the same percentages for the following year, ending up creating a '*vicious cycle*', the consequence of which would be to crystallise the market shares of the OGCs. In this way, it would be almost impossible for a body that uses only this type of licence to change its representativeness, just as it would be extremely complex for a new body to be accredited and gain a market share;
- in light of the above, it is appropriate to introduce, in relation to the mere turnover criterion, corrections based on the number of authors or AIEs that have mandated a OGC. Again, the calculation of the number of mandators cannot be based on assigning the same value to each of them, but must take due account of both the number of rights conferred (a mandator could mandate one OGC for only one right, and ask another OGC to manage all the others) and the role played in the work, according to the indications given above. If one of the mandator's conditions is met (they are predominantly a supporting artist, rather than a main artist, a voice actor, rather than an actor, an adaptor, rather than an author), it is proposed to apply a 'deduction' of 0.5. In other words, that mandator, having at least one of those characteristics, will be counted as 0.5, instead of as 1;

- once the criteria for the calculation of the representativeness of the OGCs have been established, it is therefore necessary to determine the shares due to the '*stateless artist*' beneficiaries, i.e. those not associated with anybody, covered by the '*licensing with an extended effect*';
- to this end, it is necessary to determine the criteria with which to calculate what share of the revenue that each user generates from the use of works and other protected materials belongs to '*stateless artist*' rights owners. In this sense, it seems useful to make a distinction between those users who have available the information necessary to give a weighting to the presence of stateless artists in the works used and those who do not have such data;
- in the first case, however, two possible situations can be distinguished. The first is that where users' contracts with the OGC are based on actual use. In this type of relationship, each user uses differently the repertoire of each OGC and therefore the allocation of the stateless artist's share can also be done by adjusting the percentages of each body to divide the proceeds due to stateless artists. The second is that where the data provided by the user regarding the use of the works are used only for allocation purposes and not to calculate the remuneration;
- finally, if a user does not have the data to quantify the number of stateless artists present in the works used, they must refer to a '*stateless quota*' on the basis of which what is due to these rights owners is calculated. This quota should be indicated by Agcom on the basis of the discussions to be held within the Technical Table established by Resolution 396/17/CONS. The allocation, as in the previous case, is made using the criteria of representativeness;
- without prejudice to the freedom of negotiation of the parties, the national legislator conferred on the Authority, as provided for in Article 110e, the exercise of a dispute resolution power with specific regard to the provisions relating to transparency and contractual adjustment mechanisms under out-of-court dispute resolution procedures for the claims of authors and AIEs explicitly provided for by the Directive;
- in this sense, the Directive promotes the adoption of out-of-court dispute resolution procedures also in order to overcome the natural reluctance of authors and AIEs to assert their rights vis-à-vis the contractual counterparty before a court, although this option remains unaffected;
- in fact, the Authority's intervention is proposed as an alternative, and not a substitute, to that of the judicial authority, since the application is not admissible if the court has been consulted and the administrative procedure should be closed where the applicant refers to the judicial authority, so that, among other things, it is required to submit an express declaration of waiver of the action before the Authority;
- the power to resolve disputes conferred on the Authority, both with regard to the fulfilment of the reporting and disclosure obligations and the triggering of the contractual adjustment mechanism, is expressed through the initiation of an investigation by the competent Directorate at the request of one of the parties;

- if the parties do not reach an agreement independently, each of them may apply to the Authority, which shall first ascertain whether the objective conditions for initiating the investigation have been met;
- the institution of the special power of attorney is provided for, since if the authors or AIEs intend to file the application through a collective management organisation or an independent management body, they may grant it to them by means of a public deed or by a notarised private deed, attached to the application;
- the application must be submitted through the forms made available for this purpose, to which it is possible to attach, always electronically, any documentation useful to substantiate the reasons for the use of the procedure. Once the preliminary procedural and admissibility checks have been carried out, the Authority resolves the dispute, as a rule, within ninety days of the request. The procedure shall ensure an adequate and transparent adversarial procedure;
- beyond the specific definition of the dispute, the Authority also exercises a power of inspection, therefore it is entitled to acquire any necessary elements through inspections, requests for information and documents, hearings, investigations, requests and reports. Without prejudice to the fact that in the event of failure to provide information, the Authority shall apply, in accordance with the procedure laid down in the Sanctions Regulation, the penalties provided for in Article 1(30) of Law No 249 of 31 July 1997;
- Articles 18(a)(5), 46(a)(4), 80(2)(f) and 84(4) of the LDA as amended by Legislative Decree 177/2021 that govern the so-called '*fair remuneration*', i.e. the fair remuneration payable to authors and AIEs for rental and lending, and the appropriate and proportionate remuneration due to the authors and AIEs of cinematographic and similar works for each use of the work. Previously, the definition of the remuneration was delegated to the procedure established by Legislative Decree No 440 of 20 July 1945. With this new amendment, in the absence of agreement between the categories concerned or the parties concerned, the remuneration must be determined by the Authority. Since these are in fact a significant part of the same rights referred to in Article 180b, it is considered that specific indications regarding representativeness may contribute to facilitating the definition of remuneration;
- the procedures in question cannot be equated with those relating to dispute resolution, including those relating to transparency obligations and the contractual adjustment mechanism discussed above. For this reason, the Authority considers that the two procedures are regulated separately, in two separate chapters (Chapter IV and Chapter V) of the Regulation;
- the need to determine fair remuneration occurs when two parties negotiating a contract – in this case a licensing agreement – do not agree with each other on the remuneration due. The purpose of this procedure is therefore not to settle a dispute between two parties;

- although not explained by the primary regulation, which refers only to the '*absence of agreement*', it seems appropriate to provide that the Authority's decision on fair remuneration may be requested by either of the two parties negotiating the agreement. In order to submit the application, the party must demonstrate the existence of the negotiation, including an economic proposal already submitted to the counterparty. Symmetrically, upon receiving notification from the Authority of the applicant's request for the definition of the remuneration, the other party must in turn have the opportunity to make its own economic proposal. On the basis of the provisions set out in Article 22 of Legislative Decree No 35/2017, negotiations between the parties must be based on the principles of good faith, transparency and reasonableness;

CONSIDERING, therefore, that the draft regulation should be submitted for public consultation in order to obtain any useful input from stakeholders;

HAVING HEARD the report of Commissioner Massimiliano Capitanio, rapporteur pursuant to Article 31 of the '*Regulation on the organisation and operation of the Authority*';

HEREBY DECREES

Single article

1. The '*Draft Regulation implementing Articles 118a, 46a, 80, 84, 110b, 110c, 110d, 110e, and 180b of Law No 633 of 22 April 1941 as amended by Legislative Decree No 177 of 8 November 2021*' set out in Annex A to this resolution is submitted for public consultation.

2. The consultation procedures are described in Attachment B to this resolution.

3. Annexes A and B form an integral and substantial part of this measure.

4. The date of publication of this provision on the Authority's website shall be decisive for the purposes of the deadlines indicated in the annexes.

Rome, 22 February 2023

THE PRESIDENT
Giacomo Lasorella

COMMISSION RAPPORTEUR
Massimiliano Capitanio

Attesting the conformity of the decision
THE SECRETARY-GENERAL
Giulietta Gamba

Annex A
to Resolution No 44/23/CONS

DRAFT REGULATION IMPLEMENTING ARTICLES 18a, 46a, 80, 84, 110b, 110c, 110d, 110e, AND 180b OF LAW NO 633 OF 22 APRIL 1941 AS AMENDED BY LEGISLATIVE DECREE NO 177 OF 8 NOVEMBER 2021

Chapter I

General provisions

Article 1

Definitions

1. The following definitions are used in this Regulation:
   a) 'Authority': the Communications Regulatory Authority, established by Article 1(1) of Law No 249 of 31 July 1997, as amended and supplemented;
   b) 'Copyright Law' and 'LDA': Law No 633 of 22 April 1941, '*Protection of copyright and other rights relating to its exercise*', as amended and supplemented;
   c) 'Decree': Legislative Decree No 35 of 15 March 2017, on the '*Implementation of Directive 2014/26/EU on the collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market*';
   d) 'work': a work, or parts thereof, as defined in Articles 1 and 2 of the Copyright Law, and in particular of an audio, audiovisual, photographic, video game, editorial or literary nature, including computer software and operating systems, as well as other copyright-protected materials;
   e) 'extended collective licence': a licence concluded by a collective management organisation also extended to works or other materials covered by copyright or related rights, irrespective of the mandate given to the collective management organisation by the relevant rights owners;

f) ‘video-on-demand service’: an on-demand audiovisual media service, pursuant to Article 3(1)(q) of Legislative Decree No 208 of 8 November 2021, also authorised abroad, which also addresses the Italian public;

g) ‘collective management organisation’: an entity, as defined in Article 2(1) of Legislative Decree No 35 of 15 March 2017, which, as its sole or main purpose, manages copyright or rights related to copyright on behalf of more than one owner of those rights, for the collective benefit of them, and which fulfils one or both of the following requirements:

   i. it is owned or controlled, directly or indirectly, by its members;

   ii. it is a non-profit;

h) ‘independent management body’: an entity, as defined in Article 2(2) of Legislative Decree No 35 of 15 March 2017, which, as its sole or main purpose, manages copyright or rights related to copyright on behalf of more than one owner of those rights, for the collective benefit of them, and which fulfils one or both of the following requirements:

   i. is not owned or controlled, directly or indirectly, in whole or in part, by rights owners;

   ii. it is for-profit;

i) ‘rights owner’: any person or entity who holds copyright or rights related to copyright or to whom, under an agreement for the use of rights or by law, a portion of the proceeds generated by the user is due;

j) ‘assignee’: any person or entity to whom the rights to a work have been definitively assigned or transferred by the first contractual counterparty of the author or artist, interpreter or performer;

k) ‘user’: any person or entity, other than a consumer, whose actions are subject to the authorisation of rights owners, the remuneration of rights owners or the payment of compensation to rights owners;

l) ‘Directorate’ and ‘Director’: the Digital Services Directorate of the Authority and the Director of that Directorate;

m) ‘Collegial Body’: the Council of the Authority.

Article 2

Purpose and scope

1. This Regulation governs the Authority’s activities relating to:

   a) assistance in reaching contractual agreements for the granting of a licence for the use of audiovisual works on video-on-demand services pursuant to Article 110b of the LDA;

b) information and communication obligations for transparency purposes referred to in Article 110c of the LDA. The Authority shall ensure compliance with disclosure obligations including through the exercise of the relevant sanctioning powers;

c) the contractual adjustment mechanism referred to in Article 110d of the LDA;

d) the criteria for measuring the greater representativeness of collective management organisations, aimed at identifying organisations authorised to conclude extended collective licences on behalf of non-associated rights owners (so-called 'stateless artists'), within the meaning of Article 180b of the LDA, in the areas provided for in Articles 18a, 46a, 73, 73a, 80 and 84 of the LDA;

e) dispute resolution, pursuant to Article 110e of the LDA;

f) procedures for defining: the fair remuneration of authors, under Article 18a of the LDA, and performers, under Article 80 of the LDA, for the assignment of the rental right; the appropriate and proportionate remuneration of authors, under Article 46a of the LDA, and AIEs, under Article 84 of the LDA, for the use of cinematographic and similar works

Article 3

General principles

1. The Authority shall protect copyright and rights related to copyright. To this end, it shall guarantee the appropriate and proportionate remuneration for the use of protected works.
2. The Authority shall promote the widespread dissemination of the legal offer of works, encouraging the development of innovative and competitive commercial offers and promoting awareness of services that allow the legal use of digital works protected by copyright, as well as access to these services.
3. The Authority, in full respect of the parties' freedom to negotiate, shall promote the conclusion of contractual agreements for the licensing of works, through negotiations conducted in good faith, between authors, artists, interpreters and performers, including through collective management organisations and independent management entities, and their counterparties.
4. The Authority shall ensure that the exchange of information necessary for the proper functioning of each sector takes place through transparent mechanisms, based on interoperable communication systems.
5. The Authority promotes the adoption of common and shared guidelines among operators in all sectors, including through the development of codes of conduct,

to be identified in the Technical Table referred to in Article 1(3) of Decision No 396/17/CONS.

Chapter II

Rights of use

Article 4

Assistance in reaching contractual agreements for the granting of a licence for the use of audiovisual works on video-on-demand services

1. Without prejudice to the contractual freedom of the parties, in the event of difficulties in concluding an agreement to grant a licence for the use of audiovisual works on video-on-demand services, either party may request the assistance of the Authority.
2. The Authority shall provide assistance to the parties to facilitate the conclusion of an agreement, the Directorate shall provide guidance on the appropriate negotiation solutions and, where appropriate, submit proposals to the parties, including with regard to the determination of the remuneration due.
3. The request for assistance shall be made to the Authority, including documentation confirming the existence of the negotiation. The applicant shall inform the other party of the request for assistance.
4. The Directorate shall, within thirty days from receipt of the request for assistance, fix a round of discussions, which is to be held also by electronic means, and shall notify the requesting party at least thirty days in advance of the date set for the round of discussions. The requesting party shall inform the other party of the date set for the round of discussions. During the first discussion session, the Directorate shall verify the actual existence of the negotiation. If one of the parties does not appear at two consecutive discussion sessions, the Authority shall cease to assist in the negotiations.
5. From the day of the first round of discussions, the Parties shall have ninety days to negotiate with the assistance of the Authority. After this period without the parties having reached an agreement, the Authority shall cease to assist in the negotiations. A new request for assistance for the negotiation of the same contract is not allowed.
6. If the parties reach a contractual agreement during the period of assistance referred to in the previous sub-paragraph, they shall notify the Authority in a timely manner.
7. The minutes of the rounds of discussion shall be drawn up, which shall contain essential information on the state of the negotiations and the outcome of the negotiations, as well as on any proposals made by the Authority.

Article 5

Reporting and information obligations

1. Authors and artists, interpreters and performers shall have the right to receive, including through collective management organisations and independent management bodies, up-to-date, relevant and complete information on the use of their works and artistic performances and the remuneration due by those to whom they have licensed or transferred the rights or by their assignees. To this end:

   a) the parties to whom the rights have been licensed or transferred are obliged to provide authors and artists, interpreters and performers with the above information at least every six months, unless otherwise agreed between the parties, for the entire duration of the use. Three years after the conclusion of the licensing or assignment agreement between the obliged parties and the authors and artists, interpreters or performers, the latter may exercise their right to receive information by making a specific request;

   b) where the transferee or licensee of the rights has assigned or sub-licensed the same rights to a third party, authors and artists, interpreters and performers are entitled to receive, upon request, additional information from the sub-licensees and assignees if their first contractual counterparty does not have all the necessary information. To this end, the first contractual counterparty shall, in accordance with point (a) provide information on the identity of sub-licensees and assignees. The latter are required to provide the requested additional information. The request to receive information can be made every six months. The request for information can also be made by the beneficiaries indirectly through the contractual counterparty of the author and artist, interpreter or performer.

2. The information referred to in paragraph 1 shall relate in particular to:

   a) the identity of all parties concerned by the assignments or licences, including secondary users of works and artistic performances who have entered into agreements with the direct contracting parties of authors and artists, interpreters and performers, or with sub-licensees or assignees;

   b) the methods for using works and artistic performances;

   c) the revenues generated from such use, including advertising and merchandising revenues, and the remuneration contractually owed, as set out in the licensing or transfer of rights agreements;

   d) with specific reference to providers of non-linear audiovisual media services:

i. the number of purchases and views generated during the reporting period;

ii. the number of subscribers.

3. The obligations referred to in the preceding paragraphs shall be deemed to have been fulfilled if the transferee, or the licensee or sub-licensee, provides the information referred to in paragraph 2 to a collective management organisation or an independent management body, possibly pursuant to Article 23 of the Decree, by virtue of a licensing agreement or a contract providing for periodic reporting on the use of the works and artistic performances and the remuneration due.
4. Collective management organisations and independent management bodies shall, on the basis of an appropriately justified request, make at least the following data available to persons to whom the rights have been licensed or transferred and their assignees, using electronic means:
   a) the works or other materials they manage, the rights they represent, directly or on the basis of representation agreements, and the territories covered by such agreements;
   b) where it is not possible to determine such works or other materials because of the scope of the collective management organisation's activities, the types of works or other protected materials they represent, the rights they manage and the territories covered by those agreements;
   c) the entities they represent and any other useful information in order to determine the remuneration due and to prevent or settle disputes with other collective management organisations.
5. The fulfilment of the obligations referred to in paragraphs 1 to 3 shall serve to ensure a high level of transparency in each sector and shall comply with the principles of proportionality and effectiveness. The obligations set out in this Article shall take into account the specificities of the various content sectors, in particular those of the music, audiovisual and publishing sectors.
6. The information referred to in paragraphs 1 to 3 shall be that which the transferees or licensees or sub-licensees have at their disposal. Information shall be transmitted to authors, or to artists, interpreters and performers, regarding only works for which their rights have been identified. The information shall be provided in an intelligible manner, in order to allow the effective quantification of the economic value of the rights in question, as well as any appropriate assessment of the need for a possible adjustment of the remuneration.
7. The information referred to in paragraphs 1 to 3 shall ensure an adequate degree of transparency for authors and artists, interpreters or performers, including through collective management organisations, or independent management bodies, without prejudice to the trade secrets of the transferees or licensees of rights and their assignees. Both parties shall be bound to the utmost respect for the confidentiality of such information, on the basis of agreements specifically

concluded. Particular protection is given to information that constitutes business data and sensitive commercial information.

8. The information referred to in paragraphs 1 to 3 is not due if there has been no change from the previous periodic communication, or if the changes are negligible or not functional to the adjustment of the remuneration.
9. In duly justified cases where the administrative burden of providing the information referred to in paragraphs 1 to 3 is disproportionate to the revenues generated from the use of the work or execution, the obligation shall be limited to the types and level of information reasonably foreseeable in such cases.
10. The obligations set out in this Article shall not apply where the contribution of the author or artist, interpreter or performer, is not significant in relation to the work or performance as a whole, except where the author, artist, interpreter or performer demonstrates that he or she requires information for the exercise of his or her rights under Article 6 of this Regulation and requests information for that purpose.
11. For contracts governed by collective agreements, the transparency rules of the agreements shall apply to the extent that they fulfil the conditions laid down in this Article.
12. Article 24 of the Decree shall apply to collective management organisations and independent management bodies with regard to the information obligations set out in this article.

Article 6

Contractual Adjustment Mechanism

1. Without prejudice to the relevant provisions of collective agreements, authors and artists, interpreters or performers, directly or through collective management bodies or independent management bodies, are entitled to receive from the party with whom they have concluded a contract for the use of rights or from their assignees an appropriate and fair remuneration in addition to the remuneration initially agreed, if that remuneration proves to be disproportionately low in relation to the revenue derived over time from the use of their works or artistic performances, taking into account all possible types of revenue derived from the use of the work or artistic performance, for whatever reason and in whatever form, including providing recordings online.
2. In order to ascertain whether the remuneration is disproportionately low, all relevant revenues from the use of the work starting from 12 December 2021, including, where appropriate, from merchandising and use of the work in any form, shall be taken into account; in addition, account shall be taken of the costs incurred in the realisation and use of the work, the contribution of the author or the artist, interpreter or performer, the specificities and remuneration practices of

the different content sectors, the specific circumstances of each case and any other elements useful for that purpose.

3. The assessment referred to in the previous paragraph shall also be carried out on the basis of the information provided in accordance with Article 5.
4. The contractual adjustment mechanism referred to in paragraph 1 shall apply only in cases where the author or the artist, interpreter or performer receives a flat-rate remuneration.
5. Where, for the use of a work or artistic performance, the author or artist, interpreter or performer already receives adequate and proportionate remuneration in accordance with other legal provisions, including those referred to in Articles 46a and 84 of the LDA, the proceeds to which such remuneration is commensurate or to which they are in any case related shall not be considered for the purposes set out in this article.
6. The provisions of paragraph 1 shall not apply to contracts concluded by collective management organisations and independent management bodies referred to in Article 2(1) and (2) of the Decree.

Chapter III

Extended collective licensing

Article 7

Extended collective licensing

1. For the rights referred to in Articles 18a, 46a, 73, 73a, 80 and 84 of the LDA, the three most representative collective management organisations for each category of rights owners may enter into licensing agreements, for the use of works or other materials, which also affect other rights owners not associated with them or other collective management organisations in the sector, ensuring equal treatment.
2. On an annual basis, the Authority shall identify the categories of rights owners entitled to the remuneration referred to in Articles 18a, 46a, 73, 73a, 80 and 84 of the LDA, on the basis of documentation provided with the same frequency by the collective management organisations.
3. The intermediation of the rights referred to in paragraph 1 in favour of the categories identified pursuant to paragraph 2 must be expressly provided for in the statute of the collective management organisation as well as in its general terms and conditions of membership.

Article 8

Criteria for measuring representativeness

1. The Authority, including through an independent third party, shall ensure that an assessment is carried out on an annual basis to determine which are the three most representative collective management organisations for each category identified in accordance with Article 7(2).
2. Where possible, the assessment referred to in paragraph 1 shall be carried out for each collective management organisation taking into account, for each of the categories, the data on the actual use of the works by the user, as well as the user's turnover. Where applicable, that assessment shall also take into account the fulfilment of at least one of the following conditions, i.e. where the rights owner:
    a) has a supporting role in at least 50% of the works for which it has given a mandate to the collective management organisation;
    b) has participated in the work as a voice actor in at least 50% of the works for which it has given a mandate to the collective management organisation;
    c) has acted as an adaptor of the work in at least 50% of the works for which it has given a mandate to the collective management organisation.
3. Where the information referred to in paragraph 2 is not available, the assessment of the representativeness of collective management organisations shall take into account, for each category:
    a) the annual average of the fees invoiced over the last three years of business on the basis of contracts signed with users, as resulting from the financial statements deposited and certified by the audit body;
    b) the number of rights owners managed on 31 December of the previous year.
4. For each collective management organisation, the calculation of the number of rights owners within the same category shall take into account the following parameters:
    a) for each rights owner managed by means of a direct mandate of representation having effect for Italy, the collective management organisation is attributed a score resulting from the ratio between the number of categories of rights entrusted by the owner and the total number of categories of rights identified annually by the Authority. The score shall be awarded to the collective management organisation as follows:
        i. 0.2 points, if it manages less than 25% of the rights of the owner;
        ii. 0.4 points, if it manages between 25% and 49% of the rights of the owner;
        iii. 0.6 points, if it manages between 50% and 74% of the rights of the owner;

iv. 0.8 points, if it manages between 75% and 99% of the rights of the owner;

v. 1 point, if it manages 100% of the rights of the owner;

b) The score indicated above shall be multiplied by the value of 0.5 if at least one of the conditions set out in paragraph 2 is met;

c) a value of 0.5 shall be assigned for each rights owner managed by virtue of a representation agreement.

5. Each user pays annually to the three most representative collective management organisations a share of the revenues derived from the use of works and other protected materials of rights owners not associated with any collective management organisation. The quota shall be calculated in accordance with the arrangements agreed with those bodies, taking into account the following criteria:

a) where the user has the necessary information available, the share of the proceeds shall be proportionate to the presence, in the works used, of owners not associated with any collective management organisation. The user shall allocate the share of revenue among the three organisations that are most representative for the category of relevant rights owners, identified annually by the Authority, in accordance with the criteria set out in this Article:

i. in the case of licensing agreements providing for remuneration calculated on the actual use of the works, in proportion to the representativeness of each of the three organisations calculated on the basis of the data on the use of the works and the proceeds paid to each of them for the use of the rights of associated owners;

ii. in the case of licensing agreements that do not provide for remuneration calculated on the actual use of the works, in proportion to the representativeness values indicated by the Authority in the above-mentioned annual assessment;

b) if the user does not have the information necessary to verify the presence, in the works used, of owners not associated with any collective management organisation, the share of proceeds shall be commensurate with the share of beneficiaries not associated with any collective management organisation for the category of relevant beneficiaries indicated annually by the Authority, on the basis of the indications provided by the Technical Table referred to in Article 1(3) of Resolution 396/17/CONS. The user shall allocate the share of revenue among the three organisations that are most representative for the category of relevant beneficiaries, identified annually by the Authority, in

accordance with the criteria set out in this Article, in proportion to the representativeness values.

6. In order to be able to access the assessment referred to in paragraph 1, collective management organisations shall have appropriate technical and operational tools, which ensure a timely and analytical allocation capacity, including in relation to non-associated beneficiaries, as well as the effective ability to adapt to the provisions of Article 19 of the Decree.

7. For the purposes referred to in paragraph 4, collective management organisations shall prepare on their website a dedicated section, in which information shall be published on the amounts collected on behalf of non-associated persons, the manner in which the reports are made, the manner in which the sums collected may be requested, and the methods and time frames with which payments are made. The same section shall also report on the activities undertaken in order to comply with the regulatory provisions of Article 19 of the Decree.

Article 9

Payment of sums collected from beneficiaries

1. Beneficiaries who are not associated with collective management organisations may request from each of the collective management organisations referred to in Article 8(1) their shares of the sums collected for the use of their rights.

2. The amounts referred to in paragraph 1 shall be paid within 30 days from the date on which the request was sent in accordance with the procedures set out in the specific section referred to in Article 8(5).

3. The sums collected by the collective management organisation, if not requested by the rights owner referred to in paragraph 1, shall be kept available for the period indicated in Article 19 of the Decree, and used in the manner provided for therein.

Article 10

Right of withdrawal or limitation of the mandate

1. Beneficiaries may exclude their works or other materials, at any time and in a simple and effective manner, from the extended collective licensing mechanism provided for in this Chapter.

2. The right to withdraw or limit the mandate referred to in paragraph 1 shall be communicated by the rights owner to the three most representative collective management organisations referred to in Article 8(1), providing 30 days' notice and without having to give any reason or without incurring costs or penalties.

3. The rights owner, in order to exercise the right of withdrawal or limitation of the mandate referred to in paragraph 1, may complete and send, by certified e-mail or by registered mail, the standard form made available by the three most representative collective management organisations on their website or may submit, by certified e-mail or by registered mail, any other explicit declaration of its decision to exclude works or other materials from the extended collective licensing mechanism. Collective management organisations shall be required to provide the Authority, on an annual basis, with a list of persons who have exercised the right of withdrawal or limitation of mandate in the preceding 12 months.
4. The collective management organisations to whom the notice of withdrawal or limitation of the mandate is addressed shall provide written confirmation to the rights owner, on a durable medium, of the receipt of that notice.

Article 11

Effects of exercising the right of withdrawal or limitation of the mandate

1. The exercise of the right of withdrawal or limitation of the mandate shall put an end to the use of works or other materials of the rights owner by the three most representative collective management organisations referred to in Article 8(1), within 30 days from the receipt of the relevant communication. From the same date, contracts concluded with third parties by the three most representative collective management organisations shall cease to have effect vis-à-vis the rights owner who has exercised the aforementioned right.
2. The remuneration accrued to the right owner during the period of effectiveness of the mandate but received by the three most representative collective management organisations after the withdrawal or limitation of the mandate shall be allocated in accordance with the provisions of the extended collective licence.

Chapter IV

Procedures for the resolution of disputes before the Authority

Article 12

Disputes relating to reporting and information obligations

1. Without prejudice to the right to bring proceedings before the court, in the event of a dispute concerning the obligations referred to in Article 5, transferees or licensees of rights and their assignees and sub-licensees, as well as authors and artists, interpreters or performers, including through collective management organisations and independent management bodies, may apply to the Authority, which shall resolve the dispute in the manner set out in this Chapter.

2. Collective management organisations and independent management bodies shall initiate the procedure referred to in paragraph 1 at the specific request of one or more authors or artists, interpreters or performers.

Article 13

Disputes relating to the contractual adjustment mechanism

1. Without prejudice to the right to bring proceedings before the court, in the event of a dispute between the authors and the artists, interpreters or performers, on the one hand, and, on the other hand, a party with whom they have entered into a contract for the use of the rights with regard to the contractual adjustment referred to in Article 6, or its assignees, either party may apply to the Authority, which shall resolve the dispute in the manner set out in this Chapter.
2. Collective management organisations and independent management bodies shall initiate the procedure referred to in paragraph 1 at the specific request of one or more authors or artists, interpreters or performers.
3. The author or artist, interpreter or performer who intends to apply to the Authority may submit the application by conferring a special power of attorney by means of a public act or an authenticated private deed attached to the application to a collective management organisation or to an independent management body.

Article 14

Requests for dispute resolution

1. The requests for dispute resolution referred to in Articles 12 and 13 shall be transmitted by using and filling in all the parts, failing which it is inadmissible, of the model provided on the Authority's website, attaching any documentation necessary to explain the motives and reasons that prevented an amicable resolution. The form shall be sent to the Authority by certified e-mail, to agcom@cert.agcom.it, with every part filled in, and duly signed digitally, in compliance with current legislation. For persons who are not established in Italy, the communications to the Authority referred to in this measure must be made in an appropriate equivalent manner.
2. Proceedings may not be brought before the Authority where proceedings are pending before the Judicial Authority for the same subject matter and between the same parties.
3. If, in the course of the proceedings, a party refers the matter to the Judicial Authority, even if only in part, the Directorate shall order the proceedings to be closed.

4. The Directorate shall arrange for the application to be closed administratively if it is:
    a) inadmissible due to a failure to comply with the provisions referred to in paragraph 1 or due to lack of essential information;
    b) inadmissible pursuant to paragraph 2;
    c) inadmissible as it does not fall within the scope of this Regulation;
    d) manifestly unfounded;
    e) withdrawn before the decisions of the Collegial Body.
5. The Directorate shall notify the applicant of any closure that takes place pursuant to paragraph 4(a), (b), (c) and (d), and the counterparties of any closure arranged pursuant to paragraph 4(e). The Directorate shall periodically inform the Collegial Body of the aforementioned administrative closures.
6. With regard to applications that are not closed, the Directorate shall initiate proceedings pursuant to Article 15.
4. The Directorate shall order the administrative closure or initiate the procedure within twenty days of receipt of the application.

Article 15

Initiation of the procedure

1. The Directorate shall notify the applicant and the counterparty, via the contact details indicated in the application referred to in Article 14(1), within twenty days of receipt of the request, that the proceedings have been initiated.
2. The communication referred to in paragraph 1 shall indicate:
    a) the identification number of the dispute;
    b) the date of registration of the application;
    c) the person responsible for the proceedings;
    d) the deadline for the conclusion of the procedure;
    e) the deadlines by which to submit pleas and documentation, as well as additions and replies to the opposing submissions.
3. At the same time as the communication referred to in paragraph 1, the Management shall provide the other party with the application presented, complete with annexes.
4. The final measure shall be adopted within ninety days from the notification of the initiation referred to in paragraph 1. The start of this period shall be suspended in the event of an investigation requirement, i.e. in light of the

particular complexity of the case that necessitates further and specific investigations. The suspension shall operate for a maximum of 30 days and the parties shall be informed of it.

5. The counterparty has the right to submit pleas and file documents, under penalty of inadmissibility, within 15 days from the notification of the initiation of the procedure. Within the next ten days, once again under penalty of inadmissibility, the applicant may submit its own replies. The documents filed pursuant to this paragraph shall be simultaneously made available to the other parties by electronic means.
6. The Director, including *ex officio*, after hearing the interested parties, may order the consolidation of several pending proceedings where the identity of the parties or of the matter examined makes such a solution efficient. In such a case, the investigation shall be entrusted to only one responsible person.
7. Where the person responsible for the proceedings considers it appropriate for the purpose of investigating the dispute, or upon the express request of one of the parties, that person shall convene the parties concerned for a hearing, which is also to be held electronically, by communication to be sent at least seven days in advance of the date set.
8. The parties may appear at the discussion hearing personally or be represented by the attorney referred to in Article 13(3). In the case of legal persons, the parties shall appear at the hearing in the person of their legal representative or a person delegated by the latter.
9. The fact that one of the parties does not appear or refrains from advocating their reasons at the hearing cannot be construed as accepting the other party's reasons or waiving the application. In such a case, the dispute is in any event settled in light of the documentation entered into the case file and taking into account the written submissions of the parties.

Article 16

Dispute resolution measure

1. Once the investigation phase has been completed, the Director shall forward the documentation relating to the dispute to the Collegial body, attaching the report of the person responsible for the procedure and a proposal for a decision.
2. The Collegial Body, if it does not find the application to be valid, shall order its closure.
3. If it finds the application to be well founded, the Collegial Body shall take a decision to resolve the dispute, which is promptly notified to the parties and published on the Authority's website.

4. Unless otherwise indicated, the time limit for complying with the order referred to in paragraph 3 shall be thirty days from its notification to the counterparty. In the event of non-compliance within the prescribed period, Article 1(31) of Law No 249 of 31 July 1997 shall apply.

Chapter V

Determination of remuneration if there is no agreement between the parties

Article 17

Disputes concerning the establishment of appropriate and proportionate remuneration for authors and artists, interpreters or performers

1. Negotiations between users and collective management organisations and independent management bodies for the conclusion of licensing agreements or of any other contract for the use of works and other protected materials shall be conducted in good faith, through the exchange of all necessary information, in accordance with the provisions of Article 22 of the Decree.
2. For the purpose of assessing the representativeness of a collective management organisation, the parties shall take into account the criteria developed by the Authority in accordance with Articles 7 and 8 of this Regulation in negotiations.
3. Without prejudice to the right to appeal to the judicial authority, each party engaged in the negotiations of the contracts referred to in paragraph 1, in the absence of an agreement on the remuneration due to authors and artists, interpreters or performers, may, pursuant to Articles 18a(5), 46a, 80(2)(f) and 84 of the Copyright Law, request the intervention of the Authority.

Article 18

Initiation of the procedure

1. For the purposes of Article 17(3), the request for intervention shall be submitted to the Authority by filling in all the parts, under penalty of inadmissibility, of the form provided on the Authority's website and attaching any documentation useful to illustrate the reasons preventing the conclusion of an agreement on remuneration and that certifies that it has made every reasonable effort to this end, including an economic proposal already submitted to the counterparty. The form shall be sent to the Authority by certified e-mail, to agcom@cert.agcom.it, completed in its entirety, and duly signed digitally, by the applicant or by a public prosecutor with a special power of attorney, conferred by public deed or in a private deed authenticated and attached to the application. For persons who are not established in Italy, the communications to the Authority referred to in this measure must be made in an appropriate equivalent manner.

2. Proceedings may not be brought before the Authority where proceedings are pending before the Judicial Authority for the same rights and between the same parties.
3. If, in the course of the proceedings, a party refers the matter to the Judicial Authority, even if only in part, the Directorate shall order the proceedings to be closed.
4. The Directorate shall, within twenty days, arrange for the application to be closed administratively if it is:
   a) inadmissible due to a failure to comply with the provisions referred to in paragraph 1 or due to lack of essential information;
   b) inadmissible pursuant to paragraph 3;
   c) inadmissible as it does not fall within the scope of this Regulation;
   d) withdrawn before the decisions of the Collegial Body referred to in Article 21.

Article 19

Transmission of the application to the defendant

1. The Directorate shall, within twenty days of receipt of the application referred to in Article 18, having assessed whether it is well-founded and its admissibility, notify the parties of the initiation of the procedure. The communication referred to in paragraph 1 shall indicate:
   a) the identification number of the procedure;
   b) the date of registration of the application;
   c) the person responsible for the proceedings;
   d) the deadline for the conclusion of the procedure;
   e) the deadlines by which to submit pleas and documentation, as well as additions and replies to the opposing submissions.

   The defendant, to whom the application complete with annexes is sent at the same time as the notification referred to in paragraph 1, shall, within the following twenty days, communicate to the Authority and to the applicant the information and data necessary for the determination of the remuneration and shall formulate its own economic proposal for the remuneration.

Article 20

Convening of the parties

1. The person responsible for the proceedings, within ten days of receipt of the communication from the defendant, shall fix the date of the hearing, which he shall communicate to the parties and which shall take place, preferably, by electronic means. The hearing shall take place, as a rule, no later than ten days from the convening.
2. Except in the event that the parties agree on the determination of fair remuneration during the meeting, each of them may formulate, within five days of the meeting, additional information or proposals that shall be communicated to the person responsible for the proceedings and to the other party.
3. If the parties reach an agreement during the meeting, minutes shall be drawn up that, once signed by the parties, shall be binding pursuant to Article 1321 of the Civil Code.
4. The signing of the minutes referred to in paragraph 3 by both parties shall have the effect of withdrawing the application referred to in Article 18, and shall be made pursuant to Article 18(4)(d).
5. The procedure shall be concluded within 90 days of the notification of initiation referred to in Article 19(1). The start of this period shall be suspended in light of the particular complexity of the case that necessitates further and specific investigations. The suspension shall operate for a maximum of 30 days and the parties shall be informed of it.

Article 21

Determination of remuneration

1. Within the period referred to in Article 20(5), the Collegial Body shall, by its own decision, define the procedure, establishing, also on the basis of the criteria laid down in Articles 7 and 8, which of the economic proposals made is appropriate.
2. The Collegial Body, if it considers neither of the proposals to be appropriate, shall, by its own measure, also on the basis of the criteria set out in Articles 7 and 8, decide on the parameters of quantification and the methods of calculating the remuneration.
3. If one of the parties does not participate in the meeting or, in any case, does not make a proposal for fair remuneration, the Collegial Body shall decide on the proposal made by the other party or on the quantification parameters and methods of calculating the remuneration.
4. If the economic proposal by the applicant is less than ten thousand euro (EUR 10 000), the measures referred to in the preceding paragraphs shall be adopted by the Director, who shall periodically inform the Collegial Body thereof.

Chapter VI

Supervision and control

Article 22

Supervision of compliance with reporting and information obligations

1. The Authority shall supervise the compliance with the reporting and information obligations referred to in Article 5.
2. The Authority may at any time acquire any necessary information through inspections, requests for information and documents, as well as hearings.
3. The Authority may arrange, pursuant to the Regulations on inspections, regular inspection programmes, in order to verify compliance with the legal provisions.
4. In the event of failure to communicate the information requested by the Authority pursuant to paragraph 2, the penalties provided for in Article 1(30) of Law No 249 of 31 July 1997 shall apply.

Article 23

Sanctions

1. In the event of a breach of the information obligations referred to in Article 5(1) and (2), the Authority shall apply the penalties provided for in Article 110c(4) of the LDA.
2. For all other cases, the provisions of Article 41 of Legislative Decree No 35 of 15 March 2017 remain unaffected.

Chapter VII

Final Provisions

Article 24

Legal protection

1. An appeal may be brought against the Authority's measures adopted pursuant to these Regulations before the competent court.

Article 25

Communications to the Authority

1. The communications referred to in this Regulation shall be sent exclusively by e-mail, and where possible by certified e-mail.

2. The parties shall communicate in the first useful document the e-mail address at which they wish to receive the communications.

Annex B
to Resolution No 44/23/CONS

CONSULTATION PROCEDURES

The Authority intends to obtain, by means of public consultation, comments and information on the draft Regulation set out in Annex A to this Resolution.

To this end, all interested parties – operators in the sector also in associative form, institutional entities and representative associations of users and consumers – are invited to submit their contributions to the consultation within the mandatory deadline of **sixty (60) days** from the publication of Resolution 44/23/CONS on the Authority's website www.agcom.it.

Amendments to the Regulation may be proposed in the form of an amendment to the articles with a brief justification on the aspects of interest of the respondent, together with any other elements useful for the consultation.

The communications, marked with the words '*Public consultation on the draft regulation implementing Articles 18a, 46a, 80, 84, 110b, 110c, 110d, 110e, and 180b of Law No 633 of 22 April 1941 as amended by Legislative Decree No 177 of 8 November 2021'*, as well as the name of the respondent may be sent, within the **sixty day** deadline from the publication of Resolution 44/23/CONS on the Authority's website, to the following certified e-mail address: agcom@cert.agcom.it, indicating in the subject line the name of the respondent followed by the above wording, or, at the respondents' discretion, by registered mail with acknowledgement of receipt, courier or recorded delivery by hand, to the following address: Communications Regulatory Authority, Digital Services Directorate, Digital Rights Office, Via Isonzo 21/b, 00198 Rome. Note that the submission of documentation electronically using the email address indicated above replaces the delivery of hard copies using the above methods. Whatever the method of transmission chosen, communications must also be copied, within the same period, in electronic format, to the address segreteria.dsdi@agcom.it.

The interested parties may request, with a specific application, to disclose their comments during a hearing, on the basis of the written document previously sent. The above request must reach the Authority by sending it to the certified e-mail address above, as well as to the e-mail address segreteria.dsdi@agcom.it, within forty-five days from the publication of Resolution No 44/23/CONS on the Authority's website. A contact person, a telephone contact and an e-mail address must be indicated in the same application for the forwarding of any subsequent communications.

Participants in the consultation who wish to remove access to some of the documentary elements transmitted together with the comments, must attach to the documentation provided the declaration referred to in Article 16 of the Access Regulation, approved by

Resolution No 383/17/CONS, containing the indication of the documents or parts of the documents to be removed from access and the specific reasons for confidentiality or secrecy — in relation to each part of the document — justifying the request.

Communications provided by the participants in the consultation shall not pre-establish any title, condition or obligation in relation to any subsequent decisions of the Authority.

The Authority reserves the right to publish on its website, *www.agcom.it*, the comments and documents received also in non-anonymous form, taking into account the degree of accessibility indicated.