

## Artists', authors', performers' copyrights: what's new in the AGCOM Regulation

### [AGCOM Decision No. 95/24/CONS](#)

On 15 May, the Communications Guarantee Authority (AGCOM) published [Resolution No. 95/24/CONS](#), the '*Regulations on the information and contractual adaptation obligations of authors and performers, as well as on the representativeness of collective management associations, in implementation of Articles 18-bis, 46-bis, 80, 84, 110-ter, 110-quater, 110-quinquies, 110-sexies, 180-ter of the Copyright Law*' (['Regulations'](#)).

The *rationale* of the Regulation is to provide enhanced protection in favour of artists, authors, performers (AIE) - parties with less bargaining power in both the negotiation and enforcement phases of copyright assignment or licensing contracts - by attempting to balance the different interests at stake, including those of users.

In order to provide for greater transparency, the Regulation provides for specific information and communication obligations for copyright assignees and licensees (Article 5). This information must be provided at least once every six months (unless otherwise agreed upon by the parties providing for a longer term, provided that it does not exceed one year), for the entire duration of the exploitation. Three years after the conclusion of the assignment or licensing agreement, the right holders may obtain such information by expressly requesting it from the exploiters. In the case of sublicensing, right holders shall also be entitled to receive additional information from sublicensees and other assignees. Information obligations shall also be deemed to be fulfilled if the assignee, licensee or sub-licensee provides such information to the collecting organization or independent management entity.

Collecting societies will therefore play a decisive role in the implementation of the Regulation. It is provided, *inter alia*, that the three most representative Associations for each category of rightholders may enter into extended collective licences for the remuneration of rights, also in favour of entities not represented by any Association (Articles 7 and 10). Each right holder may decide - by means of an *opt-out mechanism* - to exclude its works from the aforementioned collective licensing mechanism.

AGCOM will assess annually which associations are responsible for collecting and distributing the remuneration to IEAs, based on specific representativeness criteria (art. 8) such as: i) the type

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of right holders; ii) the types of economic exploitation; iii) the relevant users; and iv) the quantification of the actual use of the works.

The Regulation also provides for the IEAs' right to an adequate and fair remuneration, so-called "fair compensation" (art. 6), foreseeing that if the initially envisaged flat-rate remuneration proves to be disproportionately low compared to the revenues subsequently generated by the exploitation of the works, the remuneration may be redetermined. For the purpose of assessing whether or not the remuneration can be considered too low, the revenues deriving from the exploitation of the work in any form, including *merchandising revenues*, will be taken into account.

Lastly, a decisive role will be played by AGCOM itself, which is entrusted with the task of supervising and monitoring the obligations imposed by the Regulation, including that of settling disputes concerning (i) the aforementioned disclosure and information obligations, (ii) the contractual adjustment of fees, and (iii) the definition of fees in the absence of an agreement between the parties.

The Regulation will enter into force on 14 June 2024 and the sectors most affected are likely to be music, publishing and audiovisual.

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