

## **IRF FOREIGN DISTRIBUTION RULES**

### **I. Domestic and foreign allocation**

The available annual distributable amount arising from the exploitation of copyright and neighbouring (related) rights according to the IRF balance of accounts shall be split into a domestic and a foreign share to be determined by the delegates (see Articles of Association, Art. 11 b). The domestic share shall be distributed in line with domestic distribution rules which are determined by the Domestic Distribution Committee. The foreign share shall be distributed in line with these rules pursuant to the following provisions.

### **II. Foreign Distribution**

#### **1. Allocation Radio and TV income**

<sup>1</sup> The foreign share shall be divided into radio and TV according to the tariff structure. Radio share: Revenues from tariffs relating to radio and TV share: Revenues from tariffs relating to TV.

<sup>2</sup> The allocation of the foreign share across these pots shall be carried out by the Foreign Distribution Committee.

#### **2. Radio Distribution (radio share)**

<sup>1</sup> The income for radio from tariffs which relate to cable re-transmission shall be distributed according to the technical broadcasters' reach among the radio stations.

<sup>2</sup> Any other radio income, particularly from the usage of performing rights shall be distributed according to the mean value of broadcasters' reach and broadcasting range.

<sup>3</sup> Radio channels which do not serve the purpose of actual radio programmes – such as e.g. channels which broadcast music only as well as programmes with a broadcasters' reach below 50% shall not be taken into consideration for the radio distribution.

#### **3. TV Distribution (TV share)**

The TV share shall be distributed according to the following rules whereby revenues from the top supplement CT 12 (collection year 2017-2020) and the supplement 1 CT (collection year 2021) shall be distributed exclusively to broadcasters which actively sell commercials in Switzerland. The distribution rules are linked to the loss incurred by broadcasters as a result of fast-forwarding of advertising on time shifted television. The distribution is based on time shifted viewing [addition of tsv market share in % (TSV total) target groups 15-49 y. and 15-59 y.]. With the exception of the separate distributions concerning CT 12, namely the share in supplement 1 (pot 1), which is reserved for broadcasters with Swiss advertising without participation in the industry agreement, and CT 12 supplement 2, the following distribution criteria shall otherwise apply (general distribution):

### 3.1 Broadcasters' reach and scope of rights

For distribution purposes, an equal emphasis shall be given to the broadcasters' reach and scope of rights.

#### 3.1.1 Broadcasters' reach

<sup>1</sup> Broadcasters shall be allocated a point value in line with their reach as shown in the following table:

Broadcasters' reach	Points
More than 35	10
30 – 34.99	09
25 – 29.99	08
20 – 24.99	07
15 – 19.99	06
10 – 14.99	05
05 – 9.99	04
1.5 – 4.99	03

<sup>2</sup> Broadcasters below a reach of 1.5 % shall not be included in the general distribution.

#### 3.1.2 Scope of rights

<sup>1</sup> Broadcasters shall be allocated a point value in line with their scope of rights as shown in the following table:

Scope of rights	Points
more than 60%	10
40 – 59.99 %	06
20 – 39.99 %	03
Less than 20%	02

<sup>2</sup> Point value 2 shall cover neighbouring rights (related rights) of broadcasters as well as their copyright if it amounts to less than 20%. Point value 2 shall also be applicable to broadcaster for whom no copyright can be established.

<sup>3</sup> It is the duty of the broadcaster to provide evidence on the scope of the rights acquisition for Switzerland and the Principality of Liechtenstein. Any rights share higher than 20% shall be first considered for a distribution if the evidence for the rights has been submitted within three months after the end of the collection year for which the broadcaster has made claims.

### 3.2 Factors for full and special interest programmes

Full (or comprehensive) programmes shall be double-weighted, whereas special interest programmes such as news, sports, music and similar programmes shall only be single-weighted.

### **3.3 Teleshopping, channel sharing**

<sup>1</sup> Broadcasters which do not serve the purpose of transmitting actual TV programmes - such as teleshopping or lottery channels etc., shall not be included in the general distribution.

<sup>2</sup> Programmes which are re-transmitted via channel sharing, can be distributed as one programme upon request by the broadcaster.

### **3.4 Pay TV**

<sup>1</sup> Pay TV stations do not participate in the income from re-transmission (Art. 22 Swiss Copyright Act) and supplement 1 and 2 of tariff CT 12 and the CT 12 top supplement respectively.

<sup>2</sup> They are included into the general distribution with a factor which correlates to the ratio of the tariff income the pay TV stations participate.

## **4 General provisions**

<sup>1</sup> Only those programmes shall be considered for TV distribution that have been referenced by Mediapulse. Wherever the TV broadcasters' reach or TSV market share is mentioned within these rules, it refers to Mediapulse measurements. If there is reasonable doubt regarding the Mediapulse broadcasters' reach measurements for individual programmes with respect to the lower threshold pursuant to item 3.1.1 of these distribution rules, it is possible, in individual cases, to include such broadcasters in the distribution based on a financial lump-sum solution which has to be individually evaluated. The IRF shall undertake the necessary verification upon a substantiated application by the respective broadcaster.

<sup>2</sup> Broadcasters' reach and broadcasting range shall be authoritative for the radio distribution. In terms of the broadcasting range, these are radio measurements by Mediapulse. Wherever the regulations are based on the broadcasters' reach of the radio, they refer to the measurements of the technical broadcasting reach i.e. the measurement of whether a channel can be received in a household.

<sup>3</sup> If the prerequisites for the classification of a programme pursuant to the provisions of these rules change, they shall be considered in the distribution taking place per 1 January of the following year. Broadcasters which have not been transmitted during a whole year shall not be considered for that year in the distribution.

<sup>4</sup> Broadcasters shall be obliged to notify the IRF without delay of any changes which could influence the classification of the programme pursuant to the provisions of these rules.

<sup>5</sup> If the broadcaster fails to inform the IRF in time, the IRF shall be entitled to retroactively adjust the classification for the programme from the point in time when the change in circumstances occurred, and to reclaim any outstanding amounts at the expense of the broadcaster, respectively to offset these against the credit balance of the broadcaster.

<sup>6</sup> Likewise, the management must be informed of the current names and designations of the affiliated broadcasters as at 31 December of each collection year. Any distribution decisions based on missing information are at the expense of the broadcaster.

<sup>7</sup> Broadcasters shall qualify for distribution if they have entered into a rights management agreement. The rights assignment shall take place with effect from 1 January of the previous year in which the contract was concluded. For retroactive claims from other previous years (limitation period: max. 5 years), the Distribution Committee creates reserves in the form of lump-sum payments per broadcaster and collecting year.

<sup>8</sup> The statutory limitation period for claims of members and contracting parties arising from these rules shall be 5 years.

<sup>9</sup> The confidentiality of broadcaster data shall be guaranteed. The members of the Distribution Committee are obliged to maintain confidentiality with regard to the broadcaster data of which they have obtained knowledge in connection with the performance of their duties.

### **Entering into force**

These Distribution Rules were adopted by the Foreign Distribution Committee according to Article 20 para. 1 b of the IRF Articles of Associations and entered into force as of 1 January 2014.

\*\*\*

Last modified on 10 June 2022