

# The DIRECTOR GENERAL'S REPORT TO THE EXECUTIVE BOARD ON ARTISJUS'S ACTIVITY IN THE YEAR 2008

## Introduction

The year 2008 following the centenary of the collective administration of rights in Hungary brought about major changes in the management of Artisjus: having done several decades of active work, June 30, 2008, marked the retirement of Director General Dr. Péter Gyertyánfy Finance Director Mr Gyula Kardos, and Mrs Ferencné Balogh, head of the Department for Book Keeping and Royalty Payment. In the second half of 2008 their work was carried on by respectively Mr József Álmos Bogos, the new Finance Director and Mr Gábor Lovász, the new head of the Department for Book Keeping and Royalty Payment.

## 1. The domestic background of Artisjus's operation in 2008

Act LXXVI of 1999 on Authors' Rights, the most important guarantee for Artisjus's operation, underwent major amendments in the course of 2008. The amendments were most attentively followed and influenced

by the professional policy, the area of the authors' rights in the broader sense, and the representations of users' interests alike.

Thanks to this, a great number of proposals for amendment were raised on the part of the affected representatives to the original draft. Part of the proposals were aimed at an erosion of the collective administration of rights: various motions wanted to impose restrictions, from above, on the size of the levy collectable on blank carriers, and namely to reduce it to as low as 6 per cent of the market price of blank sound and image carriers. The adoption of the proposal would have resulted in an about 85 per cent fall of the incomes collected by Artisjus, in view of the private copying of works, for the composers and music publishers represented by the Society. Thanks to an effective action on the part of rightholders, the proposal was not adopted by Parliament.

The act on amendment adopted on December 15, 2008, the last day

of session of Parliament, included the following major provisions affecting Artisjus:

- contrary to the original submission, the domestic societies concerned with the collective administration of rights retained their legal monopoly (like previously, the rights of each group of rightholders may be represented throughout the country by one society each),
- contrary to the original submission, it is up to the Ministry of Education and Culture, further on too, to exercise the state supervision over the collective administration of rights,
- major amendments affected the order of approval of royalty communications, now including detailed procedural regulations and deadlines – in view of which Artisjus is obliged at a considerably earlier date to see to the determination of royalties and to come to terms on them with users.

In addition to reporting on the strategies aimed at a supervision of the media law it was necessary

## ARTISJUS members and other represented rightholders

1. Members of the Society	1 672
a) of whom	
Authors and Composers	1 392
Legal successors	248
Music publishers	32
b) of whom	
Section of literature	145
Section for serious music composers	215
Section for light music composers	1280
Section for music publishers	32
2. Client under representation	5 640
Total:	7 312

already at the end of the year also to report on the first bill put forward by the Members of Parliament. The comments made by Artisjus were aimed at ensuring the coherence of authors' rights and introducing obligatory quotas in respect of the Hungarian music.

The Society also participated in the supervision of the **Penal Code** by making observations and proposals. The penalization of failing to pay the levy on blank carriers was, after several unsuccessful attempts, finally introduced at the end of last year, with the new rule becoming effective beginning with the middle of January 2009. It is hoped that this modification will manifest itself in more effective actions against the import of blank carriers without the payment of the levy.

### 1.2 Development of the economic and market environment

Artisjus's market environment, the music industry in the narrow sense, is generally affected by a continuing narrowing of the conventional trade of sound recordings (globally,

sales contracted at about 20 per cent in 2008). The fall of incomes accounted for by disc sales can, for the time being, by no means be offset by the royalty collected on the online distribution of music. The main reason is the overall inconsideration of the responsibility of the service providers co-operating in the unlawful file exchange, and another reason is the lack of new business models jointly elaborated by all affected participants.

Instead of the collection of mechanical royalties, thus, more and more emphasis is being laid on the incomes earned on broadcasting, public performances, and sales of blank carriers.

The broadcasting market is also undergoing a major transformation: thanks to the "digital switchover" an increasing number of terrestrial digital channels will be available to consumers. This is about to entail a transformation, a fractionalization of the advertising market, too, which may result in the collection of royalties on broadcasting at a larger number of sources.

Side by side with the tendencies referred to above, a determinative event was in 2008 the knock-on effect in Hungary of the international financial crisis and the economic crisis following from it, becoming manifest in the fourth quarter of the year. The direct effects of this will be possible to be identified only with full knowledge of the 2009 figures. At any rate, the situation requires considerable precaution in respect of the business plans of Artisjus, as the economic crisis will inevitably affect the willingness and capability of all enterprises to pay royalties on the use of music.

## 2. Relationships with members and rightholders

### 2.1 Society matters

In February 2008 the Executive Board set up the **Committee on Light Music Composers' Views**, which permits for the younger active generation of light music composers to have access to detailed information and to make proposals. The body acts as a group of advisors to the Executive Board and its members are designated annually by the Board. In 2008 the Committee raised general questions in relation to the operation of Artisjus on the hand, and ones affecting various details of the activity of collection on the other, the answers to which were elaborated by the Legal Department of Artisjus. This Annual includes as a special part the report on the Committee's activity in 2008 composed by Krisztián Som, executive officer of the committee.

On December 12, 2008, the Society held an **extraordinary general**

**ARTISJUS's royalty receipts under its collective rights administration activity**

Appendix 1  
(HUF thousand)

	2007	2008	%
1. Royalties due to composers on public performances	4 513 623	4 856 759	107,60
2. Radio and television royalties	2 730 750	2 529 199	92,62
3. Internet, phone signal tones etc. royalties	113 197	89 503	79,07
4. Blank carrier and cable TV royalties to rightholders	1 424 994	1 212 267	85,07
5. Sound recording ("mechanical") royalties	417 411	307 615	73,70
6. Literary works broadcasting royalties	103 442	92 785	89,70
7. Royalties to rightholders from abroad	521 516	416 549	79,87
8. Non-musical and neighbouring rights royalties	3 433 858	3 176 088	92,49
9. Cable TV royalties by foreign broadcasters	499 393	415 340	83,17
<b>Total:</b>	<b>13 758 184</b>	<b>13 096 105</b>	<b>95,19</b>

**Royalties collected for other domestic collective rights administration societies as well as foreign rightholders under the neighbouring rights category**

Appendix 2  
(HUF thousand)

	2007	%	2008	%
Those represented by ARTISJUS	9 824 933	71,41	9 504 677	72,58
Those represented by HUNGART, FILMJUS, EJI and MAHASZ	3 433 858	24,96	3 176 088	24,25
Foreign broadcasting organizations	499 393	3,63	415 340	3,17
<b>Összesen</b>	<b>13 758 184</b>	<b>100,00</b>	<b>13 096 105</b>	<b>100,00</b>

**Proportions of distributed royalties, costs as well as welfare and cultural supports in relation to the incomes**

Appendix 3  
(HUF thousand)

	2007	%	2008	%
Incomes	13 758 184	100,00	13 096 105	100,00
Administration costs	2 877 814	20,92	2 798 062	21,37
Welfare and cultural supports	510 421	3,71	510 464	3,90
Distribution to ARTISJUS rightholders, and to other non-ARTISJUS rightholders (organizations)	10 369 949	75,37	9 787 579	74,73

meeting, the reason for which was raised as an objective circumstance by the entry into effect in 2008 of the Professional Rules for Musical Societies adopted by CISAC, the International Confederation of Societies of Authors and Composers, which are binding for the societies concerned with musical rights.

Previously, Artisjus's Statutes permitted membership exclusively to the rightholders active in the European Economic Space; now, thanks to the Professional Rules, Artisjus membership is open to *all composers and music publishers based anywhere in the world.*

The Professional Rules require a *"fair" representation of music publishers in the Executive Board.* The General Meeting was obliged to make a decision also in respect of the issue whether it considers as "fair" in the representation of musical rightholders the 1/3 proportion existing in several other countries (and referred to by the GESAC – ICMP common declaration having no binding effect) or the 1/9 proportion currently maintained. The General Meeting took the decision to continue maintaining the current proportion.

The amendment to the Copyright Act to enter into force in February, 2009, is going to eliminate the obligatory legal administration affecting the mechanical reproduction based not on sound recording (but on video recording or realized in multimedia works). The General Meeting saw to bringing about the conditions necessary for initiating a *voluntary collective administration* in this field. The Society took steps in this respect early in 2009.

In the autumn of 2008 negotiations were initiated on the director general level between Artisjus and the Hungarian Music Publishers' Association. The talks are aimed at promoting the establishment of unified interests between composers and publishers as well as of an appropriate background for Artisjus's effective operation. The topics proposed in broad lines affect the preparation of a common information material related to music publishers' contracts, the introduction of the application of comparable contracts to ensure a more efficient administration of contracts, as well as the continued support of the music publishers' legal practice through the collective administration of rights.

Having in view a more efficient and more concentrated maintenance of relations with its members, customers and rightholders, Artisjus started the operation of its Authors' and Composers' Customer Service in the autumn of 2008. Thanks to the reshaped working processes now also having a IT background support, a more efficient treatment of the complaints affecting concerts among others has been achieved as early as by now. The experiences of the operation will be analyzed at the end of the first half of 2009.

## 2.2 Relations and co-operation with the other domestic societies concerned with the collective management of rights

In 2008 Artisjus concluded a 7-year agreement of strategic significance with the Copyright Office of Performers (EJI) representing the rights of performers as well as the Association of Hungarian Record Producers (MAHASZ) administering the rights of the publishers of sound recordings.

According to the Agreement the authorization of the public performances of mechanical music handled by catering trade, commercial and hotel industry enterprises continues to remain with a single society, that is to say, Artisjus is to provide this service to the benefit of the EJI and MAHASZ rightholders, too.

The activity of the umbrella organization Pro Art Association for Authors and Composers' Rights (of which Artisjus is also a founding member) was helped by the Society through case-by-case consultation, and Artisjus's legal experts delivered various lectures this year in the courts and public prosecutor's office related further training launched under a Pro Art initiative. Having in view a more effective action against illegal online uses, the Society also came to terms on a regular supportive data supply.

## 3. Royalty collection and expenditures in 2008

*At the request of the Supervisory Board of Artisjus the Society switched over, beginning with 2008, to the method of recording and reporting on the royalties collected and the costs deducted as required by the accountancy regulations, putting thereby an end to the aspectual differences arising between the logics of the annual financial accounting-and-balance and the director general's annual report on collection-and-distribution based on a period extending into the new calendar year. The comparative figures included in the Appendices already comply with this approach.*

## ARTISJUS royalty receipts under its collective rights administration activity

	2007	2008	%
1. Royalties due to composers on public performances	4,143,662	4 465,976	108.7
2. Radio and television royalties	2,481,462	2 281,054	91.9
3. Internet, phone signal tones etc. royalties	110,746	87,194	78.7
4. Levy on blank carriers	1,139,581	942,781	82.7
5. Cable television royalties to composers	153,400	140,188	91.4
6. Sound recording ("mechanical") royalties	417,412	307,614	73.7
7. Literary works broadcasting royalties	95,093	86,103	90.5
8. Royalties to rightholders from abroad	521,516	416,549	79.9
9. Non-musical and neighbouring rights royalties	3,433,857	3,176,088	92.5
10. Cable television royalties by foreign broadcasters	499,392	415 339	83.2
<b>Total:</b>	<b>12,996,121</b>	<b>12,318,886</b>	<b>94.8</b>

The balance-included overall amount of the royalties collected by Artisjus in 2008 runs to 13.096.105 thousand forints (see Appendix I). Within this, the total of musical royalties due to domestic and foreign composers, lyricists, legal successors and music publishers ran to 9.504.677 thousand forints, whereas the amount collected by Artisjus on behalf of respectively the collecting societies of other rightholders and the foreign television channels contracting with the Society to this end ran to 3.591.428 thousand forints (Appendix II).

From the figures above it can be concluded that the trend of growth which was characteristic of the years past, but which was lessening recently, has come to a stop. Apart from the current economic crisis, the reasons for this originating in the sphere of collection will be dealt with farther below, related to the specific areas of collection. It is nevertheless important to point out that the sum of the royalties to be paid out to the rightholders in 2009 based on the turnover in 2008 will

nevertheless be higher – above all thanks to the high interests on deposits – by some 5.3 per cent as compared to the royalties paid out in 2008 on the basis of the collections in 2007.

The collection of *royalties on public performances* is the domain where the actual activity of the society concerned with the collective administration of rights and the efficiency of the controls it carries out are in direct relation with the amount of the royalties collected. In 2008 the Programmes Licensing Department of Artisjus carried out on-the-spot controls at some 30.000 commercial and catering shops as well as accommodation facilities providing music, which means that considering the whole of the year Artisjus was doing inspection at some facility as often as 17.48 minutes. As a result of the inspections, a total of 14.198 orders to pay had to be submitted by the Society in 2008 against the users not ready to pay even on demand, which was 28 per cent more than in the preceding year. Thanks to all this, the total of the royalties collected on

performances in 2008 was some 8 per cent higher than the corresponding figure for 2007. It can be stated at the same time that this area of income has reached the limit of extensive growth, wherefore what will be necessary in the time to come is to concentrate on further increasing the internal efficiency. With this in view, at the end of 2008 the Society elaborated a transformation of the counties-related conventional system of the collection of royalties on public performances, of which a further improvement of the on-the-spot inspection activity may be expected in 2009. The Society began the collection of royalties on the activity of reproduction on music centres, furthermore a new group was set up to be concerned with a most efficient identification of programmes and events and the relevant invoicing.

The sum collected as *broadcasting related royalties* remained far below the expected level. It is mostly due to this shortfall that the total sum of incomes analysed above was only as much as presented. The decline

may be explained by the media market reasons as follow.

The financial situation of the public media was not stable in 2008 either. Both against the Hungarian Radio as well as the Hungarian Television directed by a managing vice-president having a significantly limited competence, the Society was obliged to initiate legal proceedings, as a result of which ultimately both users paid the royalties due according to the contracts, however, the affected sum was received from the Hungarian Television only in 2009, which major sum was thus not included in the Society's 2008 related receipt figures.

The long-term broadcasting contracts concluded with the two big commercial television companies likewise expired in 2008, in the course of whose renegotiation it was raised by them as a major issue, with reference to the overall market trends referred to, that the royalties should be decreased. As a result of the negotiations, somewhat lower royalties were agreed on, this was however counterbalanced by the fact that the long-term agreement included also a volume guarantee as well as by the stipulation of an extensive auditing-related sphere of authority. It is nevertheless unquestionable that the renegotiated contracts have resulted in an unforeseen shortfall of royalties.

It was manifest also in the *cable television* market that occasionally various major actors showed less readiness to make payments, particularly in the fourth quarter of the year. The high interests on deposits having appeared in view of the peculiar money market situation urged various enterprises to shift to 2009 their payments due

in 2008, considering that by the use of legal means it was impossible to enforce the payments due within a few weeks. The receipts thus belated also lessened Artisjus's overall 2008 receipts.

The receipts of royalties on *sound recording publications* were continuously decreasing from 2002, and namely by as much as 25 per cent in 2008. Artisjus could, however, retain the direct licensing of the publications in Hungary of the multinational record publishers (with those amounting to 1/3 of all such publications in the country), which entailed a corresponding collection of royalties thereon.

The total of the royalties collected on *blank sound and image carriers* enabling private copying showed on average a 16 per cent fall as compared to 2007. The contraction was accounted for by the following causes:

- Like previously, also in 2008 the public prosecutor's office refused to accept Artisjus's relevant standpoint (supported by the Ministry of Justice and Public Security), wherefore it was impossible to take efficient steps against the importers of illegal carriers offered for sale without hologram stickers and to seize the illegal carriers (this situation may somewhat turn to the better after the putting into effect of the relevant modification of the Criminal Code in 2009),
- the import of Slovak carriers bearing a low royalty, which is incompatible with the EU prescription, continues to be a major problem (as these carriers are being sold factually on the Hungarian market, Artisjus will try to enforce its claims in 2009)
- the growth of the capacity of carriers entails a decrease in the

fees, as actually it is impossible for the latter to linearly keep pace with the former (as a consequence of which the fees are inevitably becoming degressive),

- furthermore, larger capacities meet consumers' needs for a longer period, wherefore they buy less carriers less frequently.

The situation is further impaired by the fact that the use of writable CD and DVD discs as well as of MP3 players is gradually being replaced by that of multifunctional devices, particularly cellular phones. On the part of the manufacturers of cellular phones supplied with memories suitable for private copying and especially of ones featuring a music storing function no voluntary compliance with the legal regulations may be experienced, wherefore Artisjus instituted legal proceedings against the major dealers. In 2008 the international representatives of manufacturers and rightholders launched negotiations under the supervision of the European Commission, the progress of which is also being followed by Artisjus.

The royalties accounted for by *online uses* continue to represent a minimum share in Artisjus' receipts. As regards the future, Artisjus aims at offering flexible licensing conditions and co-operating with the other actors of the music industry in coping with the new business models.

In 2008 the *administration costs* to report on according to the annual financial accounting affecting the collective administration of rights amounted on average to 21.37 per cent (*Appendix 3*), however, the share of costs deducted and used actually on the collection and distribution

### Division of collected royalties

	2007	%	2008	%
Accounting income	13,758,184	100.0	13,096,105	100.0
Administration costs	2,877,814	20.9	2,798,062	21.4
Deductions for social and cultural purposes	510,421	3.7	510,464	3.9
Distribution	10,369,949	75.4	9,787,579	74.7

### Royalties collected for other rights administration societies and foreign broadcasting (HUF)

	2007	%	2008	%
Represented by ARTISJUS	9,062,871	69.8	8,727,459	70.8
Represented by HUNGART, FILMJUS, EJI and MAHASZ	3,433,857	26.4	3,176,088	25.8
Foreign broadcasting organizations	499 393	3.8	415,339	3.4
<b>Total</b>	<b>12 996 121</b>	<b>100.0</b>	<b>12,318,886</b>	<b>100.0</b>

of royalties was not higher than by and large 18 per cent, the average for the recent years, which may be considered a reasonable figure even according to a regional comparison. The personal costs of operation increased by 22.7 per cent. However, this figure may by no means be considered a trend, as it is an individual one: in fact, in 2008 the reason for this high figure was, on the one hand, the retirement of an outstandingly great number of employees in view of the changed respective regulations (about 10 per cent of the overall number of active employees) and, on the other hand, the obligatory allowances due to the higher executives likewise leaving their positions (director general, finance director, heads of book-keeping and royalty payment sections).

The maintenance expenditures and investment costs increased by

6 per cent, actually in line with the overall size of inflation.

#### 4. Documentation and distribution

With the intention of a co-ordinated management of the works-related documentation tasks a reorganization was carried out in the Distribution and Documentation Department, resulting in the setting up a Documentation Section. The aim of the special new organization is to achieve a more optimal distribution of the workload within the department as well as to elaborate and apply a system of rules for a uniform standard documentation complying with the latest international standards.

Artisjus' documentation and distribution activity as well as the identification abroad of the

Hungarian works is greatly helped by the fact that in the course of 2008 Artisjus, as an independent "node" (local data source), joined – alone within the region – the so-called CIS-Net database used by the most advanced foreign copyright societies. This provides the possibility for the Society to make daily updated online publications on all Hungarian works bearing the standard work code (ISWC) on the surface now accessible to 89 copyright societies.

#### 5. International environment

In the first half of 2008, CISAC set up a working group which tried to create a licensing model related to online uses, partly aiming to avoid the condemning resolution related to the international competition case instituted against various CISAC

societies. Artisjus was also involved in the work of the group where it, in the course of negotiations, represented the interests of the European small and medium-sized societies and repertoires.

The working group's activity was obligatorily interrupted by the European Commission's resolution putting an end to the case on competitive right. The Commission acting as a competition authority of the Community sent the decision to 24 European societies concerned with collective administration in July 2008. According to the resolution the collective administration societies concerned with music, keeping to a co-ordinated attitude, influenced the *territorial effect of the reciprocal representation agreements* in a manner violating the right of competition. (According to the explanation, in fact, it cannot follow from the business interests of each and every participant that the administration of rights should be entrusted to a single organization in each country, namely to that having a seat on the given territory.) No fine was imposed on the societies found guilty, however, the decision obliges the affected collecting societies to bilaterally renegotiate the conditions mutually provided to each other affecting the licensing of satellite broadcasting, cable retransmission and online exploitation. What may be inferred from the resolution is that the Commission's aim is to create a

situation on the basis of which an oligopolistic system of a few big concentrated European rights administration society would come into being in the near future, for the modes of exploitation in question, at least.

Against this Commission resolution, Artisjus filed a suit to the court of first instance of the European Communities (the same was done by 21 other rights administration societies and CISAC). The procedure is going on in 2009. Since the effect of the resolution had not been suspended, simultaneously Artisjus entered into bilateral negotiations. By March 15, 2009, the final term provided by the Commission, these had successfully been finished.

The largest European collective rights administration societies, on their part, already took steps towards the practical realization of the licensing model complying with the Commission's intentions. They established new licensing platforms which, in general, try to conclude agreements, on the basis of the exclusive representation of the repertoire (acquired rights) of a given major music publisher, not for the whole world repertoire but only for part-repertoires covering the "online" rights of the directly represented rightholders. Such global users are the "targets" which provide musical content services in several European member states. In the interest of the establishment

of this model, the rights applying to online uses had been withdrawn from the local collecting societies by the major multinational music publishers, which was an unparalleled action in the history of the collective administration of rights. In actual fact, this practice is going to lead, instead of the uniform licensing based on the world repertoire solidarity, to a different confused system, on the basis of which a central licensing of the use by Pan-European service providers of the works having a multinational music publisher background may though occur, however, the other elements of the world repertoire on the one hand, and the licensing of the minor local users would remain practically fully uncovered, as it would become unaccomplishable, and economically unviable for that matter. Currently, we are working in such a chaotic period of licensing.

Also in 2008, Artisjus co-operated in the work of GESAC bringing together the European rights administration societies and of BIEM, the organization of the societies concerned with mechanical rights. It continues to provide accommodation for the regional directorate of CISAC, which held several international seminars and education courses in 2008 in Budapest.

Budapest, May 10, 2009

Dr. András Szinger