

# SOCIETY ARTISJUS HUNGARIAN BUREAU FOR THE PROTECTION OF AUTHORS'

## RIGHTS

### BUSINESS REPORT

#### ON THE YEAR ENDING ON 31 DECEMBER 2012

(all balances are indicated in thousand HUF unless otherwise specified)

## **1. The operational environment of Artisjus in 2012**

### 1.1 Legal environment

The amendments of Act No. LXXVI of 1999 on Authors' Rights and Act No. CLXXV of 2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organizations, as indicated in the report on the year 2011, came into force as of 1 January 2012. (In the course of 2012, Act No. CLXXV underwent further modifications, and a number of issues of interpretation and construction raised by Artisjus and most likely, by many other non-governmental organizations as well, were settled in a reassuring manner.) By the above date, the modifications prescribed by these amendments had also been adopted by Artisjus in its internal regulations and practice, thus on 1 January 2012, the operation of the Society fully complied with legal regulations. The elements of the amended legal regulations were to be applied first in the financial report about the year 2012. Preparations to that aim were initiated by the Society in 2012.

Due to the changes in legislation on churches, the provision of the Act on Authors' Rights regarding free uses by churches was slightly modified in the course of 2012. During the amendment process, the legislator consulted Artisjus and took into consideration its opinion as a result of which the practice of the collection of royalties does not need to be changed.

Another legal amendment has been put in place in the domain of criminal law and misdemeanour law. Although it has certain implications with respect to authors' rights and it may be classified as part of the broader operational environment of Artisjus, it does not affect our activities directly. The new Criminal Code entering into force on 1 July 2013 contains a significant change, namely that it wishes to decriminalize file exchange for private usage. While the practice of this amendment still needs to take shape, it will not affect the activities of our Society for we have never wished to pursue criminal liability for private individuals. Another important modification is that the new Act introduces the misdemeanour formation of the violation of authors' rights and related rights for cases of infringement causing detriment inferior to HUF 100,000. This action will bring about changes mainly in the procedure of enforcement of royalties on blank carriers, since there, the possibility of criminal sanctions provides significant support to our enforcement of rights.

### 1.2 Evolution of our relations with authorities

The compulsory annual supervisory audit prescribed by the Act on Authors' Rights was carried out by the Hungarian Intellectual Property Office (HIPO) in 2012 as well. In the course of the annual supervisory procedure, several additional and complementary questions were addressed to the Society regarding the deepest layers of its operation. In the end, the annual supervisory procedure concluded with two minor notices, apart from which HIPO made no further statements. According to these notices, by the first semester of 2013, a distribution regulation has to be prepared about the distribution of royalties on reprography (the preparation of which is underway at the time of the composition of this report). Moreover, the information regarding the payment of blank carrier rights, available on our webpage, had to be modified (this request has already been honoured by our Society).

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In 2012, an ad hoc supervisory procedure was initiated concerning the so-called "dentist case", which was based on a decision made by the Court of Justice of the European Union pertaining directly to the practice of the right of public performance. HIPO accepted the position of Artisjus, and the solution proposed does not imply an unpredictable drop in public performance royalties.

During the tariff chart approval procedure also conducted by HIPO, and by the legal deadline (of 1 September), Artisjus submitted for approval its tariff charts serving as the basis for the collection of royalties for the year 2013. The preparations of these tariff charts had started in May 2012. Following the procedure conducted by HIPO and the actual item-by-item negotiation of public performance and blank carrier royalties, the tariff charts were approved by the Minister of Public Administration and Justice, and they were all published in the Official Journal by 1 January 2013.

## 2. Royalty income and expenditures in 2012

In the year 2012, the total amount of royalties collected by Artisjus was HUF 14,176,519.

	<u>2011</u>	<u>2012</u>	<u>%</u>
Income from public performance royalties	5,209,998	5,141,527	98.7
Income from broadcasting and cable television	3,210,122	3,833,308	119.4
- from which cable television income	1,367,216	1,473,465	107.8
Royalties on blank carriers	2,866,087	3,655,967	127.6
Royalties on mechanical and canned music	245,703	229,253	93.3
Online	55,396	53,729	97.0
Royalties on reprography		8,315	
Royalties from foreign broadcasting organizations	196,157	203,295	103.6
Royalties from abroad	292,537	237,254	81.1
Administrative costs of the distribution of royalties collected in the year prior to the relevant year	798,790	813,871	101.9
<b>Total:</b>	<b><u>12,874,790</u></b>	<b><u>14,176,519</u></b>	<b><u>110.1</u></b>

Within that, the royalties collected on behalf of the right holders represented by Artisjus amounted to HUF 10,125,289 thousand, whereas the sum collected on behalf of Hungarian collective management organizations representing other right holders and foreign television channels represented by Artisjus was HUF 4,051,230 thousand.

	<u>2011</u>	<u>%</u>	<u>2012</u>	<u>%</u>
Those represented by ARTISJUS	9,485,824	73.68	10,125,289	71.42

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Those represented by HUNGART, FILMJUS, EJI and MAHASZ	3,192,809	24.80	3,847,935	27.14
Foreign broadcasting organizations	<u>196,157</u>	<u>1.52</u>	<u>203,295</u>	<u>1.44</u>
<b>Total</b>	<u><u>12,874,790</u></u>	<u><u>100.00</u></u>	<u><u>14,176,519</u></u>	<u><u>100.00</u></u>

Artisjus successfully achieved the income increase objective proposed in its Financial Plan for the year 2012.

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##### *2.1 Live and canned music public performance market*

Catering and commercial units making up the bulk of canned music users continue to face permanent economic challenges. While the work hours of Artisjus invested into this domain continued to increase in 2012, a fact also supported by the number of monitored units, the number of new shops detected paying royalties has been steadily decreasing (for the past five years), and the market is more characterized by the closing down of shops than dynamic development. This trend has not been reversed by the fact that now Artisjus makes a continuous effort to detect smaller service units as well, which bring a lesser amount of income from royalties while necessitating more work.

Concerning live music, there was a noticeable drop in the number of major concerts of special importance and also in that of spectators. Concert organizers' willingness and capacity to pay also declined.

Due to the above reasons, income in the domain of public musical performance stayed below the 2011 level: we concluded the financial year with a sum of 98.7 per cent compared to the previous year.

In the meantime, during the approval of the 2013 tariff charts, Artisjus came across initiatives on behalf of commercial accommodation facilities and the catering industry that insisted that Artisjus take into consideration the evolution of the income of the given users in its tariff charts. Raising severe questions of principle while also implying an unforeseeable administrative workload, this proposal could not be included by Artisjus in its tariff charts. However, as a way of compromise, a new measure was introduced in 2013 for hotels: the national figures of room occupancy rates, available from the Hungarian Central Statistical Office, will be taken into consideration, which will automatically lead to a decrease in income in the year 2013. In its decision of approving the tariff charts, the Ministry suggested further negotiations between Artisjus and market interest groups regarding the possibility of taking into consideration the income and the profitability of users.

The year 2012 saw the continuation of the activities of businesses offering background music services to commercial and catering units. Some of these companies also offer a service which, according to them, exempts the shops playing music from all payment of royalties to Artisjus. Therefore, in 2012, the foreign agency of Universal Music Publishing attempted to withdraw the special Universal Music Publishing repertoire used by one of these service providers (CloudCasting Kft.) from the collective administration of rights, but the declaration and the documentation submitted to Artisjus in support thereof did not meet the relevant conditions of the Act on Authors' Rights. Consequently, Artisjus will continue to collect royalties in shops buying the services of CloudCasting in 2013.

##### *2.2 Broadcasting and cable television market*

In 2012, the sum of royalties collected from radios, television broadcasting and cable television attained 119.4 per cent of the reference level. One of the reasons behind this is that the Media Support and Asset Management Fund (MTVA) was late with its standard broadcasting royalties for 2011 regarding the entire public media, and finally, it settled its debt in 2012 besides honouring its standard payment obligation for 2012 on time as well. Nonetheless, media income exceeds the reference value of 2011 even adjusted with the above extraordinary payment.

In the television market, the steady decrease of advertising income provoked by the economic crisis has continued. At the same time, high-coverage broadcast service providers have lost ground to lower-coverage thematic channels. In 2012, the two big national commercial televisions, RTL Klub and TV2

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prolonged their contracts pertaining to analogue terrestrial broadcast with Antenna Hungária Zrt. and the National Media and Infocommunications Authority (NMHH). In the second semester of 2012, both televisions launched their new satellite-cable broadcast channels under the name of RTL II and Super TV2. In 2012, Artisjus signed a balanced long-term agreement with both commercial televisions also covering the new channels.

There has been a continuous decline in the number of radio stations: while there were 234 stations in the first semester of 2010, only 196 radio stations operated in the first semester of 2012. The share of radios in the entire media market went down from 4.5 per cent in 2008 to 2.8 per cent by the first semester of 2012.

In 2012, the contract of one of the biggest commercial channels, Neo FM was terminated by the National Media and Infocommunications Authority due to the debts of the radio. Neo FM also accumulated significant debts towards Artisjus. The Society has been making permanent efforts to collect royalties, and 66 per cent of them have been successfully collected so far with the help of payment notices, negotiations and instalment plans as well as by the enforcement of the obligations laid down in a notarial document.

The income from the cable television market showed an increase to 107.8 per cent of the 2011 income, partly as a result of the payment of the MTVA in 2012 for 2011, which also concerned cable television royalties. The other half of the increase was contributed by the royalties to be paid on the retransmission of encrypted television channels. At the same time, experts believe that the cable market consolidation might be restrained by the public utility tax to be paid on cables from 1 January 2013, levying a tax charge of several billion HUF on certain providers. The new kind of tax may lead to the devaluation of small cable companies that provide consumers of scarcely inhabited areas and who, consequently, transmit their service to their clients through much longer cables.

#### *2.3 Blank carrier market*

In the financial year of 2012, we succeeded in further increasing the amount of royalties collected on the private copying of blank video and audio carriers, thus this sector produced overall 127.6 per cent. According to our data, this might be put down to the fact that thanks to customer behaviour and needs, the turnover of tools constituting the principal source of income of producers and distributors is still going upward, and the storage capacity of these tools has been continuously growing.

As regards the blank carrier fees, intense international proceedings are still in course. The subject matter of an increasing number of cases discussed by the Court of Justice of the European Union is related to claims of royalties, and other EU organs are also engaged in talks that may lead the way for a (more) unified European legislation. There are numerous initiatives aimed at the gradual abolition as well as the reduction of the basis of royalty claims on blank carriers.

#### *2.4 The (offline mechanical) market of the collection of rights on sound recordings*

Royalties on the publication of sound recordings produced a 6.7 per cent decrease compared to our income in 2011. In 2012, the total number of copies of publications licenced/registered by Artisjus was 2.9 million, of which nearly 400 thousand copies were carriers published by composers. The use of pieces not protected by copyright that do not yield any royalties continues to represent a high ratio.

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Our analyses show that it is the replacement effect of online use that contributes greatly to the diminution of the number of copies.

*2.5 Online music market*

Income from online music amounted to 97 per cent of the 2011 reference level.

In the year 2012, some of the most notable international content providers such as iTunes, Youtube and Dreezer were already present in the Hungarian market. These companies, along with other minor international providers (e.g. Rara.com operated by Omnifone) registering for the collection of rights, are typically characterized by diverse business models: the volume of use (repertoire protected by copyright), the manner of use (downloadable/streaming/cloud-based storage), the manner of financing (autonomous prepaid/prepaid and packaged into the services of a mobile company/free and financed through advertising), the manner, procedure, and format of accounting are different in the case of every provider, but they are all claimed to be practices already crystallized and set in stone in other countries.

Due to the above factors, the management of these providers constitutes a vast task of collection and processing for Artisjus operating in Hungary, which is considered to be a small, 3<sup>rd</sup> rank market in Europe. Considering that the collection of rights on the majority of these services is carried out by the great Western (Anglosaxon, Latin) repertoire holders with a pan-European effect, Artisjus may invoice and collect rights only on its own repertoire and the remaining foreign repertoires represented by way of mutual representation agreements, but even that only after having meticulously selected and identified the relevant parts of repertoire from the accounts consisting of several million lines.

As a result of the different sources of rights, negotiations and conflict management prior to invoicing require long and complicated international procedures. Therefore, royalties often arrive several months after the relevant month, and it is only then that we can start their administration. Due to all of the above, no royalties came in from either iTunes, Youtube or Deezer in 2012.

National service providers harbouring high hopes such as Hungaroton, Muzzia and the re-launched Songo did not live up to expectations in 2012. Meanwhile, our Society succeeded in collecting royalties in 2012 on the own-edited video services of Origo and Index, the two major Hungarian portals.

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*2.6 Administrative costs*

Based on the yearly report on collective rights management in 2012, the administrative costs deducted amounted to 21.4 per cent of the royalty income according to the balance sheet. After the adjustment of the figure shown in the profit and loss account with the items accounted twice due to accounting rules (since the collection and the distribution of rights and the accounting the administrative costs thereof take place in two different years) and with the healthcare contribution to be paid on authors' rights (since this expenditure is not directly related to the operation of the Society), the average ratio of the costs effectively deducted and used for the collection and distribution of rights in 2012 did not exceed the usual rate of around 18 per cent.

	<u>2011</u>	<u>2012</u>
Net sales income:	<u>12,874,790</u>	<u>14,176,519</u>
Standard administrative costs for the relevant year	2,003,110	2,226,228
Administrative costs of the distribution of royalties collected in the year prior to the relevant year	798,790	813,871
<b>Total administrative costs</b>	<b><u>2,801,900</u></b>	<b><u>3,040,099</u></b>
<b>Adjusted net sales income</b>	<b><u>12,076,000</u></b>	<b><u>13,362,648</u></b>
Authors' healthcare contribution	630,124	647,278
<b>Operational administrative costs</b>	<b><u>2,171,776</u></b>	<b><u>2,392,821</u></b>
<b>Total administrative costs in proportion to net sales income</b>	<b><u>21.76%</u></b>	<b><u>21.44%</u></b>
<b>Operational administrative costs in proportion to corrected sales income</b>	<b><u>17.98%</u></b>	<b><u>17.91%</u></b>

**3. Relations with members and right holders, communication**

The society membership of Artisjus continued to grow: the Society had 1,912 members on 31 December 2012. At the same time, the number of non-society members entrusting Artisjus with the collective administration of their rights was 9,626.

In harmony with the provisions of its renewed Statutes, Artisjus held its first membership reunion open to all the members in September 2012. (Although the membership reunion is not an organ of the Society, members present may make proposals for the General Assembly and the Board. If 5 per cent of the members are present, the effective discussion of these proposals is mandatory for the competent organ of the Society.) At the reunion, the President and the Director General of the Society as well as the Head of its Legal Department informed the members in attendance about the most important

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events and achievements of the time period since the general assembly of the end of 2011 and about our relationship with the supervisory authority. In the following, the participants discussed the proposals of some members.

In its internal communication with right holders, the Society has continued to send regular electronic newsletters (the newsletter of December 2012 reached more than 8,200 right holders in this way). The Artisjus Authors' Academy event series also continued. In 2012, the Society provided information to right holders on three occasions and on the following topics:

- March: the launching of YouTube (guest speaker: Patrick Walker – Google);
- May: arrangements, cover versions, web2 and music;
- October: as part of the "Music Industry GPS" held in the framework of "Hangfoglalás" (Sound Conquest): public taste in music, the current situation of live music, brand building, online music world.

The number of those following Artisjus on Facebook ([facebook.com/artisjus.hu](http://facebook.com/artisjus.hu)) has tripled since its launching in December 2010.

In order to make administrative affairs more pleasant for authors, the waiting room of the Author Customer Service was refurbished in 2012: also recognized by portals of interior design, the space created by Artisjus is now more amicable and author-friendly.

By now, the most important forum of professional contact between members, clients and Artisjus is the Authors' Information System (AIS), which had as many as 1,791 registered users by 31 December 2012. In December 2012, the first step was taken towards making the AIS interactive: since that day, the system has been offering an opportunity to register works and modify the data of authors online. According to our first figures, our authors have been very active in using this service.

The Society's aim is to position Artisjus as a reliable background actor of music industry rather than a mere "authors' rights administrator", which specializes not only in copyright issues, but is also familiar with music markets. This message may be enhanced by the "Dal+Szerző" Magazine launched in 2012 and freely distributed in 4,000 copies.

Besides the quarterly royalty notification, Artisjus also sent its users a newsletter on two occasions in 2012 (since its launching in 2011).

#### **4. Distribution and documentation**

The distributions related to 2011 took place in due order and by the forecast deadlines; royalty payments were accomplished accordingly. The distribution of the broadcasting royalties related to 2011 and collected from MTVA in January 2012, as previously mentioned, was exceptionally carried out in May 2012 instead of 2013 due to the size of the amount and in harmony with the relevant provisions of the distribution regulation.

At its reunion of 23 November 2012, the General Assembly modified the Distribution Regulation<sup>1</sup> of the Society in several matters. Besides some technical modifications, the amendments of the Regulation

- gave green light to the online registration of works launched at the end of 2012

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<sup>1</sup> See [http://artisjus.hu/userfiles/file/egyeselet/szabalyzatok/felosztasi\\_szabalyzat\\_hatalyos.pdf](http://artisjus.hu/userfiles/file/egyeselet/szabalyzatok/felosztasi_szabalyzat_hatalyos.pdf)



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- enhances the importance of light music concerts in canned music distribution
- limits the importance of sound recording data in the same realm
- uses a special mathematical algorithm to adjust the superior ratio of live music distribution
- applies the rules of light music concerts of individual distribution above the payment of HUF 300,000
- introduces a bottomline distribution limit of HUF 50 by work and by distribution for online royalties to tackle the "long tail" phenomenon

Members and right holders interested were provided with detailed information and explanation about the modifications in the framework of an Artisjus Authors' Academy event held on 28 November 2012.

## **5. Social-cultural activities**

Due to the aforementioned amendment of the Act on Authors' Rights that came into force on 1 January 2012, the social-cultural activities of Artisjus had to be substantially transformed. While these functions of collective administration of rights are accepted all over the world as approved methods, and thanks to the directive on the administration of rights in preparation, they will also be included in the community law, the Hungarian legislator introduced a peculiar regulation regarding cultural sponsoring activities. The basis of the above is the 10 per cent sum deducted by Artisjus from certain non-mechanical musical and literary royalties for social and cultural purposes in accordance with the membership, agency and foreign mutual representation agreements signed with the right holders and the authorization provided by the law. (This constituted 4.24 per cent of the total sum of royalties collected by Artisjus in 2012.) According to the relevant provision of the Act on Authors' Rights, 70 per cent of the sum deducted that can be used for cultural purposes must be submitted to the National Cultural Fund (NKA), which decides about the use of the money in the framework of applications invited by the "Temporary Board Deciding about the Use of Royalties". However, the use of these royalties must take place in harmony with the provisions of the Support Policy approved by the principal body of Artisjus, i.e. the General Assembly and to be approved by the Minister of Public Administration and Justice.

In 2012, Artisjus signed an agreement with the National Cultural Fund about the transfer of the sum, the Support Policy<sup>2</sup> was drafted by the General Assembly and approved by the Minister of Public Administration and Justice. Accordingly, Artisjus transferred the sum in question to the National Cultural Fund. The National Cultural Fund set up the above-mentioned provisional board of eight persons on which a seat was granted to the President of Artisjus, Máté Victor. However, due to personal changes, the first effective meeting of the board was held only in 2013.

According to the provisions of the Act on Authors' Rights, the remaining 30 per cent of the deductions made by Artisjus may be used only for purposes of social support, also in harmony with the provisions of the above-mentioned Support Policy.

Based on the above, the operation of the Artisjus Music Foundation and the Artisjus Literary Foundation had to be significantly transformed. Ever since its establishment, the Music Foundation was always responsible for the functioning of the cultural support system. However, these tasks and amounts have now been taken over by the National Cultural Fund, and in accordance with the Support Policy, only the remaining 30 per cent of the sum could be used for social purposes by the Music Foundation.

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<sup>2</sup> See [http://artisjus.hu/userfiles/file/egyesulet/szabalyzatok/tamogatasi\\_politika\\_hatalyos.pdf](http://artisjus.hu/userfiles/file/egyesulet/szabalyzatok/tamogatasi_politika_hatalyos.pdf)

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Parallel to that, the Artisjus Literary Awards presented by the Literary Foundation had to be terminated in their previous form, and the Literary Foundation was also left with the task of literary social support.

Accordingly, at its reunion of November 2012, the General Assembly approved the modification of the Deeds of Foundation of the two foundations to reflect the changing practice. The modification was registered by the Budapest Metropolitan Court and the Foundations could start their modified activities in this spirit in the first half of 2013.

#### **6. International environment**

Artisjus continues to participate in the work of CISAC, the global confederation of rights administrators and GESAC, the European regional organization. In the framework of CISAC, the reform of the organization and the review of its objectives continued. In 2012, the European Commission published the first draft of the directive about the collective administration of rights, and Artisjus, as a GESAC member, took part in its referencing. The legislative procedure continues in 2013. In 2012, Artisjus hosted the international seminars and trainings organized by the European Regional Directorate of CISAC/BIEM.

#### **7. Green administration of rights**

The Society started to prepare for its transition to an environmentally friendly operation in 2010. A working group was set up composed of participants from each department of the society's work organization. That was necessary because "greening" is a long-term process whose implementation is conceivable only in several phases. The major achievements of the project have been the following:

- For the authors using the Authors' Online Information System, the Society has stopped sending paper-based royalty notifications since 2011; rather, they are informed about the distribution of royalties in SMS the details of which authors may check on a safe online surface.
- At the Budapest office building, a paper collecting box has been placed in every office; the janitors collect waste paper separately, thus recycling has been resolved.
- At the Budapest office building, the Society has placed a separate container for the collection of PET bottles on every floor.
- For the sake of saving printing paper, the default setting of every printer has been automatic duplex printing since 2011.
- The Society has cut down on the number of unnecessary copies in internal work processes (e.g. the Genres Classification Committee and the Arrangement Committee do not use printed lists and copies to judge works, but do their work with the help of projection).
- The Society relies on electronic administration in an increasing number of areas in its external relations as well (e.g. orders for payment, judicial enforcement).

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- In relation to authors, the Society aims at keeping in touch with them electronically, instead of through printed material (e.g. the introduction of the online registration of works – December 2012)

- It appears on business cards and in e-mail signatures that the Society is committed to environmentally friendly solutions. ("Green administration of rights" logo)

- The quarterly magazine entitled "Dal+Szerző" is printed on recycled paper, and as an alternative, it can also be read and downloaded online for free.

A tangible result achieved through the above measures is that compared to previous years, there was a 21 per cent drop in the amount of copy paper bought by Artisjus in 2012.

Due to the nature of its activities, the Society is not affected by other issues in the domain of environmental protection.

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**8. Miscellaneous issues**

The Society pursues no research and development.

The Society has a single business location (1016 Budapest, Mészáros utca 15-17.). Moreover, it has local offices in the following towns:

- Debrecen
- Győr
- Miskolc
- Pécs
- Szeged
- Zalaegerszeg

On 31 December 2012, the Society had 154 full-time employees of which 146 persons had a contract with indefinite term and 8 had a contract with definite term.

The Society has projected a net royalty income of HUF 10,411,605 thousand for the year 2013.

16 April 2013, Budapest



Dr. András Szinger  
Director General