

Annual Report of FILMJUS for 2013

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Created on 24th April, 2014 by Mr. György Kabdebó, President of FilmJus

Activity in 2013

The activity of FilmJus, similar to the previous year, was rather eventful in 2013. The activity concerning the right management was still balanced and successful, while the frequent modifications in the legal background were forcing essential and obligatory changes to FilmJus.

I describe the events below thematically.

National Cultural Fund (NCF)

As it is already known, the Board of FilmJus accepted its Support Policy as the part of the Distribution Rules in the spring of 2012, which was adopted and signed by the Minister of Administration and Justice, for the proposal of the HIPO. After that FilmJus and NCF concluded a contract on the usages of funds, where the Support Policy was the part of this document¹. In the middle of 2012, the Minister of Human Capacities appointed the members of a temporary committee, which was created to distribute the income deriving from the authors' levies. Mr. György Kabdebó was also a member of this committee. After more and more requests, the committee held its first meeting in the beginning of March, 2013, therefore in 2012 the committee did not invite any application, so the year of 2012 passed without any support, no film organisation, festival or no other event received any financial support. For this reason, some programmes were cancelled.

On the first meeting of the committee in March, 2013, Mr. Kabdebó was informed that although the Support Policy of FilmJus was adopted by the Minister of Administration and Justice, Clause d) of the Policy (which intended to support the work and operation of cinematic organisations) is not accepted by NCF. The reason was that the Statute of NCF does not allow to support operational activities. The lawyers of FilmJus did not find such rule in the Statute and other published documents of NCF. There is only one limitation among the rules of NCF, which however concerns other types of applications: according to this, only 5% of the support can be given to over-head costs. Notwithstanding, the vice-president of NCF categorically refused to invite applications in these topics.

The above described events query the seriousness of the CMO supports through NCF. Mr. Kabdebó suggested the members of the Board of FilmJus to think over the Support Policy, which make possible after a year to revise or terminate it.

¹ If a CMO wishes to give cultural support to its rightholders, it may not distribute these amounts directly, it shall be given through National Cultural Fund, which invites applications and distribute the funds.

Art. 89 Clause (11) of the Hungarian Copyright Act (Entered into force on 1st January, 2012. This text was still effective in 2013): „Maximum 25% of the revenue defined in Paragraph (8) may be used in the interests of rightholders, while maximum 10% of the revenue described in Paragraph (10) may be used for the same purpose. The supreme bodies of collecting societies shall decide on this question in its exclusive, non-transferable competence on a case-by-case basis in accordance with the relevant provisions of the rules of association and rules of distribution (support policy). On the basis of the decision of the supreme body, 70% of the amount to be used to the benefit of rightholders from the revenue defined in Paragraph (10) shall be used for cultural purposes in the interests of rightholders. On the proposal of the Office and after consultation with the Minister responsible for culture, the support policy and the decision of the supreme body on the use of revenue in the interests of rightholders are approved by the Minister responsible for justice. Collecting societies use their revenues determined in Paragraphs (8) and (10) for cultural purposes by transferring them to the National Cultural Fund in accordance with the provisions of the transfer agreement and the approved support policy.”

The members consider it important to give cultural support to cinematic organisations and to give social support to those colleagues that have bad social circumstances. Unfortunately, based on the Copyright Act, if a CMO does not wish to give cultural support, it may not give social support either.

Although the Board of FilmJus considered the procedure of NFC unacceptable, some members still wished to maintain the support under these circumstances, as the cinematic organisations and authors have no other opportunity to receive any support from other sources in Hungary.

Finally, the Board decided on its meeting in March, 2013, that it still maintains the first three Clause of the Support Policy, which determined further support purposes with regard to the deductions of 2012. The Board decided to discuss this topic on the next meeting as well.

On the next meeting of the NCF committee, the NCF informed the committee that it is not possible to invite applications for those purposes that were suggested by FilmJus (and that were determined on the basis of the valid Support Policy of FilmJus), as there is a regulation from 2008, which regulates the cinematographic supports and which prohibits to support digital cinematic publications. According to the regulation, only printed documents and publications can be supported financially. On the one hand, this regulation is absolutely discriminative, however on the other hand, we can find on the website of NCF that it already supported digital cinematic publications in the past.

The Board empowered the President, Mr. Kabdebó in May, 2013 that if NCF does not invite any suggested cinematographic application on its website until 28th June or it reduces the distributable fund, which was paid by FilmJus, he will be entitled to terminate the FilmJus-NCF contract. This means that FilmJus does not apply any cultural or social deduction from 2013, therefore the total income of FilmJus would be distributed and paid to the rightholders as royalty.

NCF did not invite any application on the above mentioned topics. Mr. Kabdebó sent letters to NCF and the Minister of Human Capacities, who is the president of NCF as well. Unfortunately, no substantive event happened, therefore FilmJus terminated its contract with NCF.

NCF stopped the activity of the temporary committee in September, 2013. The already paid amounts of 2012 were still not distributed through NCF, so the Board modified its Support Policy. According to the modifications, no cultural or social fund will be given by FilmJus in the future. The Board empowered the President to win back the fund (around EUR 100.000), which was paid to NCF and which was never distributed to the authors. As FilmJus received a refusal, it started court litigation.

Intellectual Property Office

Control procedure

In 2013 the HIPO began a control procedure that was terminated in the previous year, as the Prosecutor General refused to start procedure against FilmJus. According to HIPO, the decisions of the Board of FilmJus are unlawful, although FilmJus refused it more times and also strengthened its decisions with proper reasons.

With regard to its control procedure, HIPO required again those data that - in our opinion – they are not entitled to require. For this reason, FilmJus asked HIPO to indicate those Articles that give authorisation to require these data. We received no answer for this question, however HIPO mandated an auditor to revise the books of FilmJus. The auditor required the balance-sheet and the related documents. HIPO wished to examine whether it was legal that FilmJus capitalized its two Foundation or it should have been distributed to the rightholders. FilmJus refused to provide a part of the required data, as some

questions concerned older than 8 year-old data, which can be discarded according to the Hungarian Accountancy Act.

After that HIPO ordered on-the-spot examination. Participants were from HIPO side: dr. Péter Tarr, dr. Dénes Legeza, dr. Gáborné Dobos (auditor), from FilmJus side: the complete Executive Committee, Virgil Szilágyi, furthermore dr. Béla Bánhegyesi and dr. Luca Szegőfi. The opinions didn't approach, however FilmJus gave password to the secured website of FilmJus, where the auditor could control the balance sheets from the 90's and also gave the résumé of the ledger that were not older than 8 years.

Finally, the report of the auditor strengthened the opinion of FilmJus, so it was confirmed that there was no claim from the rightholders for the examined amount in December, 2011.

HIPO terminated the control procedure with no further effect.

Taking over the right management of costume and set designers

In September, 2012 FilmJus negotiated with the representatives of MALÁT (organisation of costume, set designers and other visual artists) and HUNGART (collecting society of visual artists).

In the opinion of MALÁT, costume and set designers are cinematographic creators as well as the filmdirectors and directors of photographs, therefore they would like to receive more remunerations due to their audiovisual contributions. Until this time, as the members of HUNGART, they received 5% of the private copy levies and cable retransmission remunerations that were collected by HUNGART, which is a very small amount and which is unacceptable. On the other hand, they would like FilmJus to manage the additional remunerations of designers, that are due to broadcasting and mechanical distribution, as these rights were not managed by HUNGART.

The representative of HUNGART told that some years ago costume and set designers also expressed their claims, the 5% share was the result of this negotiation. HUNGART accepts, if costume and set designers wish to mandate FilmJus with regard to their audiovisual works, however they are not able to give them more remuneration, only the 5% share, as the Board of HUNGART won't accept a higher share.

FilmJus expressed that it will take over the management of designers, if all of the three parties agree. At this meeting, FilmJus invited the representatives of MALÁT to the next Board meeting, where they are able to describe their wish to the Board personally.

On the next meeting of the Board, the President of FilmJus reported about the negotiations with MALÁT and HUNGART. The members of the Board agreed to take over the management of the costume and set designers' remunerations, because they are also regarded as cinematographic creators, if an audiovisual work uses costume or set. They also agreed that the 5% share, proposed by HUNGART, is very small. However, the Board expressed that there is one condition to take over their management: not just the directors' and directors of photographs' share shall be deducted for the purpose of increasing the designers' share.

The Board asked the Management Committee of FilmJus to prepare a feasibility study for the next meeting with this regard and also to attach a document about the financial issues.

In December, at the next meeting, President of FilmJus informed the Board about the planned modifications of the shares, which intend to increase the private copy shares of costume and set

designers up to 1% and in case of cable up to 0,75%. According to the proposal, these changes would affect the remunerations of directors and directors of photographs only, because their share should be deducted in order to increase the designers' share.

The members accepted the proposal about the increasing, however they disapproved that HUNGART is not willing to deduct any share for this purpose. The Board authorized the President to inform MALÁT about it. The negotiations continued in 2013.

At the first meeting of 2013, President of FilmJus informed the Board that the Executive Committee of HUNGART decided to give 10% to the designers and therefore the condition of the Board was fulfilled. According to this, HUNGART and FilmJus is going to give the following shares to the designers:

<u>Private copy levy</u>	<u>Original</u>	<u>Given</u>	<u>Remained</u>
<i>Cinematographic creators (FilmJus)</i>	22	0,6	21,4
<i>Visual artists (HUNGART)</i>	4	0,4	3,6
<i>Costume and set designers</i>		1	
 <u>Cable retransmission</u>			
<i>Cinematographic creators (FilmJus)</i>	19	0,45	18,55
<i>Visual artists (HUNGART)</i>	3	0,3	2,7
<i>Costume and set designers</i>		0,75	

The request of costume and set designers was exactly the same: to receive 1% from private copy and 0,75% from cable.

The President of FilmJus informed the Board that 50 members of MALÁT (the number of the total membership is around 80) confirmed that the right management of designers shall be managed by FilmJus. The legal department of FilmJus contacted the Sister Societies in order to get information about those countries that operate collective right management organisation for costume and set designers. We found 7 countries among our partners, 5 of them were willing to conclude a bilateral contract for this purpose. It means that FilmJus could fulfil this condition for the registration.

Unified reduction of private copy levies

At time of the modification of the Hungarian Copyright Act at the end of 2013, a new copyright modification was accepted based on a representative's individual proposal. According to this, 25% of the private copy levies shall be deducted right after the collection and shall be transferred to the NCF for cultural purposes. Following this, a huge protestation evolved with an overwhelming force and till the given deadline, which was only a couple of days including the weekend, the common protesting petition was signed by 1500 authors. The relating news can be read on the website of FilmJus. The protestation had no effect, the Parliament accepted the law modification after one week from the publication of the proposal. It came into force on 1st January, 2014 and it also affected the retransmission year of 2013.

It seems, the consequence of the protestation is that NCF and the minister terminated the operation of that committee, which intended to distribute the „voluntarily” paid shares, deriving from the authors' remunerations, through applications. After NCF didn't distribute the film authors' share that was paid by FilmJus in 2012, the Board of FilmJus decided to modify its Support Policy and to terminate its contract

with NCF. The Management Committee of FilmJus mandated the President to try to get back the amount (around EUR 87 900) that was given to NCF as it didn't invite applications and the remuneration was never distributed to the authors. After FilmJus received a refusal, FilmJus wishes to start a court litigation against NCF.

During the disputes within the Board of FilmJus, the members expressed that the President should try to reach compromise with the authorities better. According to a member, Mr. János Rózsa, personal meetings are the best solutions for handling the problematic situations. In Mr. Dénes Gábor's opinion, at present these solutions are not proper, we can not reach any result with them. The President told that he tried to reach compromise with NCF in order to be able to invite applications of the audiovisual rightholders, e.g. he withdrew to enforce Clause d) of the Support Policy of FilmJus, which intended to support the activity of audiovisual organisations and workshops. Following this, NCF put further blocks in order to avoid the invitation of the cultural applications and finally it terminated the activity of the committee, which should have called the applications. In this situation it is very difficult to reach any compromise, NCF is in breach of our contract.

Modification of the Rules of FilmJus

The Distribution Rules of FilmJus was modified once in 2013. On 24th September, the Board modified the Support Policy (which is the part of Distribution Rules) and it decided not to give any further share to NCF nor to that Society that was found by FilmJus. The reason is the dispute with NCF and their breach of contract.

The rest of the Rules was not modified in 2013.

Modification in the registry of FilmJus

In 2013, FilmJus did not propose to modify its registration.

International relations, reciprocal representation

FilmJus modified its contract with the Spanish collecting society, DAMA. The contract from now covers the representation of those South-American authors that became member of DAMA.

Members, representativity

As our members do artistic activity, which doesn't depend on qualification or membership, we can not determine the exact number of those authors that are affected by the collective right management. Therefore, the proportion between the represented members and all audiovisual authors can not be determined.

Based on Art. 92 § (1) ba) and bb) of the Copyright Act, FilmJus published the list of its members on its website and it is also possible to filter there the authors by name and role.

http://www.filmjus.hu/10_tagok/tagok_0.htm

At present FilmJus has 1607 author members, among them there are

1069 directors,

595 directors of photography,

1053 screenwriters, original work writers or dubbers,

150 legal successors,

1 individual entrepreneur,
and furthermore there are 123 production companies.

On the other hand, there are 39 rightholders, who mandated FilmJus to manage their rights, but they are not members of the Society.

Of course, a member can be indicated in more roles at the same time, e.g. an author can be filmdirector and screenwriter as well.

Regarding the proportion of usage of the managed repertoire and the represented rightholders' share from the remunerations:

Concerning the obligatory right management of FilmJus – so the private copy levies and cable retransmission remunerations -, the proportion of usage of the represented rightholders' repertoire and their share from the total income is 100% in our opinion, as FilmJus distributes all income from the levies and cable remunerations between domestic and foreign rightholders.

Concerning voluntary right management: In order to be able to determine the proportion of usage of the represented rightholders' repertoire and furthermore to determine the proportion of share of the represented directors, directors of photography and screenwriters in comparison with the share of all domestic directors, directors of photography and screenwriters, the number of all Hungarian audiovisual authors would be needed. However, as we described above, this number can not be determined exactly, as these artistic activities are not connected to registration.

It can be useful that the number of members of the Hungarian audiovisual representative organisations is taken as a basis, if no reliable data is available. However, unfortunately there is no pressure group or representative organisation in Hungary at present, which could be taken as a standard, in our opinion.

Based on the available data of FilmJus, the proportion of usage of the managed repertoire in case of voluntary right management is the following.

Due to the extended right management, FilmJus has to manage the rights of all Hungarian filmdirectors, directors of photography and screenwriters, however FilmJus is not entitled to represent those authors who opt out.

In 2013, 2 further members opt out (they are two legal successors of the same author) of the voluntary right management, so at present the total number of the opt out rightholders is 16. (As some of them are the legal successors of the same author, the number of the affected authors is 10.)

In the retransmission year of 2013, FilmJus collected remuneration due to 1456 usages in the frame of voluntary right management. Among them, 144 usages affected the opt out rightholders.

Based on the above described data, regarding the voluntary right management, the proportion of used repertoire of the represented rightholders compared to all usages was 90,1%.

Regarding Art. 91 § (2) of the Hungarian Copyright Act – at present its number is Art. 87 § (3) -, FilmJus does not have information about the proportion of the used works in case of opt out rightholders, as they agree in the remuneration directly with the users.

In 2013, the members of FilmJus reduced with 8 persons, due to death.

Concerning foreign rightholders and representativity:

We represent all authors and producers of those Sister Societies that concluded representation agreement with FilmJus. Their list can be read on the website of FilmJus.

FilmJus intends to conclude reciprocal, bilateral agreements with its Sister Societies. Of course, we still distribute remuneration to all represented rightholders, regardless of the fact that they join FilmJus as a member or not.

Staff

The organisation of FilmJus didn't change in 2013. FilmJus has the proper experience and staff for managing the collective right management and its international relations.

20 persons are in employment relationship. Concerning the preparation for the collective right management, the relevant fields are the following:

Documentary department: 10 employees

IT department: 3 persons

Legal department: 3 persons

IT background of FilmJus

FilmJus has the proper IT background and softwares that is regulated in Art. 2 § (5) g) of the governmental decree 307/2011 (XII.23.) and the proper database is also at its disposal based on Art. 92 § (3) of the Copyright Act.

The IT infrastructure did not change basically in the past few years. At present it has 26 computers, including 3 servers and 3 laptops. For the purpose of the right management, we use PostgreSQL server under Linux operating system and an own developed database, called Filman (Delphi) under Windows7.

Our database has 3 subsystems:

- *Rightholders' (persons and companies) database*, which contains all rightholders' data that are essential to be able to inform them about the distributed remunerations and moreover to be able to calculate and transfer their share. These data are managed according to the relevant law.
- *Work database*, which contains all disposable data of those works that come to the scope of monitoring (works_work sheet, where the length, genre of the work and its authors/production company can be found).
- *Monitoring database*, where the date of broadcast can be found, concerning those channels that have nationwide coverage area and that are registered in Hungary. There are 70-75 000 new records yearly (we register the name of tv station, the work, the date of broadcast and the length). In case of complex programmes (e.g. tv magazines, where different parts of works are broadcast), we register each part of work separately. In case, according to our Distribution Rules, the programme is entitled to remuneration (so, its authors and producers receive remuneration for it), we create a new work sheet and we attach it to the records of the work database.

This complex connection system is the basis of the yearly distribution, when the royalties are calculated for each rightholder in the effected retransmission year. It contains the broadcaster, date of broadcast and separately the share from private copy levy and the cable remuneration due to each role (director, director of photography, screenwriter and producer). Then the calculated remuneration is printed to a report, which is sent to the effected rightholders.

The two servers of FilmJus operate the registration softwares of FilmJus exclusively.

FilmJus joined the IPI (Interested Party Information) database, created by the members of CISAC (International Confederation of Societies of Authors and Composers), which consists of the data of authors. Its purpose is to help collective right management organisations to find the representing society of each rightholder easier and therefore to make the transactions of royalties more effective. (Each author has its own IPI identifier, which identifies that particular person.)

On the other hand, FilmJus joined the IDA (International Documentation on Audiovisual Works) database, created by CISAC as well. It contains the data of audiovisual works, its aim is also to help the collective right management. IDA recognises the registered authors with their IPI identifiers.

Distribution in 2013, regarding the retransmission year of 2012

The attached data detail the obligation that is regulated in Art. 89 of the Copyright Act.

Economic data in the financial year of 2013

Royalty income in the year:

Income from Artisjus, concerning the private copy levies and cable retransmission remunerations in the <i>financial</i> year of 2013	HUF 599.525.870
Transferred cable remuneration to AGICOA by Artisjus (foreign producers' share)	HUF 46.807.285
Remuneration due to broadcasting	HUF 10.865.148
Remuneration due to mechanical reproduction	HUF 4.838.635
Remuneration due to public performance	HUF 5.084.042
Remuneration due to on-demand	HUF 533.030
Income from Sister Societies (lump sums, like cable remuneration due to the broadcasting of Hungarian tv channels)	HUF 924.763
Income from Sister Societies (personal remunerations)	HUF 18.989.389
TOTAL INCOME in the financial year of 2013	HUF 687.568.161

FilmJus does not have any additional income from other activities.

Administration costs:

11% of the income due to obligatory collective right management	HUF 66.049.569
3% of the income deriving from Sister Societies	HUF 569.681
3% of the income due to voluntary right management	HUF 639.627
TOTAL deduction	HUF 67.258.877

FilmJus did not distribute remuneration to any other collecting society.

The income deriving from membership fees was HUF 736.755 in 2013.

Those incomes that mean the basis of calculation of the control fee (like membership fees, the share of AGICOA, bank interest and exchange rate profit) is HUF 889.991.229. The 0,3% of this amount is the control fee, which is HUF 2.669.974.

For the purpose of cultural and social support, FilmJus didn't give any fund, because of the above described disputes with NCF.

Comments to the financial report of 2013

As it can be clearly seen from the financial report, the planned income of HUF 500 million, due to levies and cable remuneration, was „overproduced” with HUF 146 million, however the income from voluntary right management was smaller than the expected amount, it was HUF 8,6 million. The income from Sister Societies was higher than the expected with HUF 5 million.

The bank interest was much smaller than we expected. The reason is the reduction of interest in the whole bank sector.

As a summary, we can see that the total income is higher than the planned amount with 95 million.

The costs became much more than in the previous years, due to the distribution for our Sister Societies. The payments to foreign societies can be planned very difficultly, as usually we negotiate with a society for months or years and then we pay their due remunerations retroactively for the previous years as well. Therefore in 2013 the paid remunerations to abroad was more than the expected with 392 million and the financial results showed 272 million deficit. Of course we paid the remaining part from the non-payable share deriving from the previous years.

It means that the paid remunerations caused the deficit, not the operational costs, because in that field we had 1,224 million savings. We still have the planned cultural-social contribution, 68,5 million, it remained unpaid because of the dispute with NCF and of the decision of the Board, which stated that FilmJus doesn't give any further share to NCF. (This remaining share was added to the next distribution in 2014.)