

# Management Report for the 42<sup>nd</sup> financial year 2018

## A. General information on the company

The object of the company is the management and enforcement as trustee of rights and claims arising for the producers, authors and other holders of rights to films of all kinds in accordance with copyright law.

The company was established in 1976. Operation of a royalties collecting society requires a license in accordance with section 77 *Verwertungsgesellschaftengesetz* (VGG, Collecting Societies Act – formerly section 1 (1) *UrhWG*, German Copyright Administration Act). The relevant authority in this regard is *Deutsche Patent- und Markenamt* (German Patent and Trademark Office) in Munich, which issued the license to conduct operations to GÜFA, by agreement with the *Bundeskartellamt* (German Competition Authority), on 13 December 1976.

Due to the overall contracting and tariff obligation, there are now uniform fee rates that are published in *Bundesanzeiger* (Federal Gazette). Certain uniform fee rates also apply for activities outside Germany.

Outside Germany, GÜFA asserts the rights assigned to it for its administration services either directly (Netherlands, Belgium, partly Switzerland, Denmark, Sweden, Finland, Spain) or has entered into agency agreements with collecting societies or similar institutions (Austria, partly Switzerland, Czech Republic, Latvia). The branch in Middelburg, Netherlands, operating under the name “GÜFA Benelux” shut down on 31 December 2018. Since 1 January 2019, the relevant rights have been managed from Germany.

Due to its function as trustee, GÜFA may not under stringent law post any profit, as regulated by section 2 (2), number 2, VGG. All revenues are to be distributed to beneficiaries after costs have been deducted in accordance with section 26 VGG. Beneficiaries in this sense are all rights holders that have a direct agency relationship to GÜFA on the basis of law or contract and for whose account GÜFA is active. These can also be the shareholders of GÜFA. All beneficiaries have accordingly the same rights.

Being a collecting society, GÜFA is subject to the supervision of the German Patent and Trademark Office. In this context, any claims under civil law, such as a shareholder’s claim to profit share, are replaced by the public-law provisions of VGG. GÜFA is thus a purely collection company without its own commercial interests or pursuit of profit. The balance sheet therefore has under “Equity capital” no “Profit carryforward” or “Net profit for the year” items. The distribution of revenues therefore was carried out according to the VGG undertaken according to a distribution plan established by the company through its council of members, which is recognised by the beneficiaries when the deed of assignment is concluded. The council of members, which advises the company, inter alia, when umbrella treaties are to be agreed and tariffs established, and which decides on the distribution plan, consists of eight persons. Five members are the shareholders, and the other three members are delegates, i.e. elected representatives of the beneficiaries who are not shareholders (member in the sense of VGG).

## B. Business report

### I. Description and analysis of the course of business and the commercial result in 2018

Total revenue of € 7.4 million was realised in the 42<sup>nd</sup> financial year (previous year € 9.3 million). The distribution amount that accordingly fell by around € 1.8 million measures € 6.4 million (previous year € 8.2 million). The overall result from public film showing rights continues to be in decline, and fell by around K€ 239 in the past year (compared to a fall of K€ 193 in the previous year). The number of film showing centres (cinemas and/or cubicles) continued to fall. This trend also continued in the other countries where GÜFA is active. In these countries, GÜFA is active directly or is represented by local collecting companies.

Revenue generated by exercising rental rights for authors and film producers showed a significant decline due to the continued reduction in the number of video rental stores, as well as the general decline in “rental” as a business model.

Umbrella agreements are in place with Bundesverband Erotikhandel e. V. (BEH), Bundesvereinigung der Musikveranstalter e. V. (BMV), VEGAS and LSVD.

Against the background of new media (smartphones, tablets, computers, printers, etc.), the revenue volume from duplications for private and other own use in the form of charges for devices and blank media is becoming increasingly significant. Zentralstelle für private Überspielungsrechte (ZPÜ) generates revenue for all royalty collecting societies in Germany. ++ Besides the existing agreements for computers, smartphones and tablets, ZPÜ was able to conclude in calendar year 2018 further general agreements with BITKOM for the previous calendar years – generally from 2008 – (including external hard drives, blanks, burners). Additional arrears payments can therefore be expected in the course of 2019. Further negotiations are also currently underway or legal actions being taken.

The agreement signed with VG BILD-KUNST regarding participation in reprography und BTX revenue from digital sources led to an overall amount of € 1.4 million being generated in 2018 (previous year: K€ 79.8). Further arrears payments following the aforementioned ZPÜ payments can be expected in 2019.

The ZPÜ was able to generate significant revenue in the area of private copies (charges for devices and blank media) over the past year totalling € 3.1 million. This includes the sums paid out by ZPÜ as film compensation that were already collected in 2017 but held in reserve. Revenue in the previous year from arrears payments for previous year measured € 6.1 million.

For the distribution period 2015 to 2017 the ZPÜ shareholders attempted to cushion the inexplicable changes in the study results forming the basis for distribution of the ZPÜ revenues by, firstly, a combination of studies from 2011 and 2015, secondly, by a film compensation. *Deutsches Patent- und Markenamt*, the German Patent and Trademark Bureau, viewed positively the proposed combination of studies, whereas the supervisory authority for collecting societies categorically rejected the idea of a film compensation. When issue of a concrete administrative order against the ZPÜ shareholders was imminent, they then amended their distribution resolution such that the decision on film compensation was cancelled. There will be no refund of payments already made to shareholders (including € 1.4 million to GÜfa). Sums will instead be set off against future revenues and the payments by ZPÜ will be treated as advance payments for 2018 and previous years. In this context, the results of the most recent studies carried out by ZPÜ provide reasonable grounds for compensation being paid for disadvantages from previous years as of 1 January 2018 (new distribution system). Workshops on this topic carried out by ZPÜ should give results in the near future

The enforcement of rights from so-called cable retransmission is performed in Germany by the joint collection centre GEMA, and outside Germany by suitable local royalty collecting agencies.

GÜFA currently represents the film repertoire of 206 film producers/holders of rights and other holders of copyright performance protection (previous year 220) and 166 film authors (previous year 183).

In order to enforce rights, monitor film screening centres, register film titles held for showings and pursue the interests of rights holders, GÜFA maintains a field service, which carried out regular and nationwide monitoring in the area of public film screenings in Germany, Austria, Switzerland, Netherlands and Belgium.

It is a member of Gesellschaft zur Verfolgung von Urheberrechtsverletzungen e.V. (GVU) in Germany and the Swiss Anti-Piracy Federation (SAFE) in Switzerland.

## II. Company's financial situation

1. The asset situation remains constant and the balance sheet structure continues to be stable. The most important asset items are liquid funds totalling K€ 2,081 (previous year: K€ 3,031). This is equivalent to 88.6 % of the balance sheet total (previous year: 96.5%). The payment practice among GÜFA's contract partners did not change in the year of the report. The number of insolvencies and unsuccessful enforcement attempts with recording of financial status measures 25 (previous year 27). Write-offs had to be undertaken totalling K€ 24.9 (previous year K€ 26). Further insolvency proceedings and write-offs are anticipated. On the liability side, the liabilities for distributions to the rightsholders account for the largest part of the balance sheet total with K€ 2,078.5 (88.5 % of the balance sheet total). This represents an increase over the previous year's figure of K€ 712 (K€ 2,078.5 compared to K€ 1,366).
2. The financial situation can be considered secure. Because most income and expenditure are also cash effective and the balance sheet structure is practically unchanged, all important information regarding the financial situation can be taken directly from the income statement. Reference is also made to the cash flow statement (see separate enclosure). Financial management is geared towards paying liabilities within the term of payment. Instalment payments to beneficiaries are made only after the liquid funds have been collected. Due to the additional special payments by ZPÜ in the report year, there were additional distributions made to beneficiaries besides the regular advance payments. Revenues from the rights are lodged as fixed deposits or overnight money exclusively with established banks in accordance with principles of risk management.
3. The income situation deteriorated compared to the previous year. Decreases in revenue were recorded alongside a slight fall in expenses, which led to the distribution sum being reduced by € 1.8 million. Payments totalling K€ 79.8 were recorded for VG Bild-Kunst in the previous year. Significant growth was achieved here in the past financial year through special payments totalling € 1.3 million. Revenues from public showings fell again by K€ 239 (previous year K€ 193).

## **C. Forecasts, opportunities and risks**

### **I. Probable trend and opportunities in the company's business**

The most important subject for ZPÜ is and will remain the generation of continuing “future revenues”, specifically for the areas of smartphones, tablets, consumer electronics and data storage media.

After representatives of copyright holders and the manufacturers and importers were able to agree on new remuneration rates, the shareholders of the ZPÜ were finally able to agree on an internal distribution scheme at the end of November 2016 for payments received on this basis for the period up to and including 2017. This applies to smartphones as of 2008, tablets as of 2012 and PCs as of 2015. For distribution of future revenues in the period 2018 to 2020, new empirical distribution studies were conducted by ZPÜ in the report year. The final assessments were still being made at the end of the report year. In general, the study results once again improved in favour of the film companies. Because the distribution studies were, however, combined for the previous period, part of these improvements will also be “diluted” by the inclusion of the results of the study from 2015.

Arbitration proceedings regarding equipment and media liable for charges are still pending before the arbitration board of the German Patent and Trademark Office, as well as follow-up proceedings before the Higher Regional Court in Munich and the Federal Court of Justice.

There is still uncertainty regarding the possibilities for remuneration debtors of cancelling or not extending existing group agreements and from technical changes and their consequences for user behaviour: new forms of use such as “cloud computing” and the transfer of content to non-local storage centres outside the country have to be investigated and payment models developed. The collecting societies are in this regard jointly conducting important lobby work, commission expert opinions and observe closely all changes in the market, including outside Germany.

### **II. Risk report**

The company has no currency risks of any significance. The liquidity situation was satisfactory at all times, and no shortages are to be anticipated. As a safeguard against liquidity risks and to maintain solvency at all times a running liquidity plan was drawn up, which will be continuously adjusted to current changes and will serve as a basis for cash management.

The goal of the financial and risk management measures taken by the company is to safeguard against all forms of financial risks. In its financial management, the company pursues a conservative risk policy, especially as the liquid means are held in trust for the company's beneficiaries and the relevant supervisory authority, the German Patent and Trademark Office, permits fixed-interest and call-money investments only in the case of debtors with a first-class credit rating, which also corresponds to the requirements for the investment guideline anchored in sections 24 ff. of the new VGG.

Credit and bad-debt risks on the receivable side are a regular part of the latent risks of the sector. The company has an efficient dunning system. Outstanding claims are collected by means of all possible out-of-court and in-court legal measures, both in Germany and abroad. The resulting risks are taken into account to a suitable extent by value adjustments and provisions at the balance sheet date. Any further losses of receivables can be disregarded due to the careful assessment of risks at the end of the year.

### **III. Outlook report**

As consumer behaviour continues to change significantly and the distribution of this form of entertainment through the Internet has progressed very strongly, sales revenues from public screening rights are noticeably decreasing. This trend, which has continued now over several years, will not change over the coming years. Efforts to secure more representation of rights outside Germany will continue. It is hoped that an all-over system of revenue collection for new forms of distribution can be secured. Payments for uses taking place through the Internet and from duplications for private and other use (devices and blank media charges) deserve special mention here. The recent successes by ZPÜ in concluding agreements for the relevant charges provide grounds for anticipating reliable revenues in this area for the coming years.

It remains to be seen how the strong spread of both legal and illegal streaming services and cloud computing affects copy behaviour (i.e. whether it could lead to a reduction in the number of permanent private copies) and to what extent the intermediate storage system taking place during streaming can in future be cited when fees for blank media are being assessed. ZPÜ has commissioned legal expert opinions to answer these questions and it will continue to work intensively in notifying lawmakers in good time regarding possible legal adjustments and the necessary modernisation of the legal framework.

Following the arrears payments from ZPÜ, we anticipate further arrears payments in 2019. The distribution amount will therefore be significantly lower.

We are cautiously positive in our assessment of the company's development in the medium term. We shall in future continue to be able to fulfil our payment obligations on time.

### **D. Research and development report**

The company does not perform any research or development work.

### **E. Branches**

The activities of our branch in Middelburg/Netherlands was reduced for cost reasons. The share of the distribution amount is 1.2 % of the distributable result (as in the previous year). This branch was closed down on 31 December 2018. Since 1 January 2019, the relevant rights have been managed from Germany.

Düsseldorf, 1 February 2019

G Ü F A Gesellschaft zur Übernahme und  
Wahrnehmung von Filmaufführungsrechten mbH

Geschäftsführung

Klaus Macke