

Transparency Report 2022

Producer Rights Denmark



Foreword

2022 has been an eventful year for Producer Rights Denmark ('PRD'). As in the past years, the focus has been turned sharply on strengthening the producer's role towards creative contributors as well as to TV stations and streaming services. The work was also devoted to ensuring that producers' revenues received via Copydan are maintained in future. For many producers, these revenues are crucial to their ability to invest in new Danish content, and it is therefore vital that distributors and aggregators continue to remunerate them when doing business based on the content producers provide to their customers.

In relation to finances, in 2022 we distributed and disbursed approx. DKK 319 million.

We wish you pleasant reading!

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Contents

- 1. Introduction.....1
- 2. Activity report for the past financial year.....1
- 3. Management areas2
- 4. Distribution policy2
- 5. Rights system3
- 6. Non-distributable and undisbursed funds4
- 7. Collective funds4
- 8. Payment frequency.....5
- 9. Grounds for delay if a collective management organisation has failed to distribute and pay within the time limit set.....5
- 10. Total non-distributable amounts and an account of their use5
- 11. Legal structure6
- 12. Expense policy and policy for cost deductions6
- 13. Investment and risk policy.....7
- 14. Supervisory function.....7
- 15. Remuneration of management and board7
- 16. Affiliations with other collective management organisations7
- 17. Money in and out of PRD.....8
- 18. Sub-report on use of the deductions made for social, cultural and educational purposes.....10

Appendix:

Producer Rights Denmark (PRD) Annual Report 2022

Transparency Report 2022

Producer Rights Denmark

1. Introduction

Producer Rights Denmark ('PRD') is a members' organisation owned by TV and film producers as well as distributors.

The purpose of PRD is to manage copyright and related rights on behalf of TV and film producers as well as distributors, which in particular includes managing the redistribution of copyright revenue received from Copydan organisations. In addition, PRD distributes rights revenue from abroad in respect of Danish TV and film productions used outside Denmark.

In 2022, PRD continued working on strengthening producers' rights position. The vast majority of Danish producers are members of PRD and have therefore placed a range of rights for management by PRD with a view to collective management.

2. Activity report for the past financial year

In 2022 PRD's activities – over and above the daily operations focused on the distribution of rights revenue – continued to relate to strengthening producers' rights position in particular.

PRD works closely with its members and the Danish Producers' Association on the regulation of reservations regarding rights in contracts concluded between producers and TV stations.

Producers continue to be challenged when TV stations demand that they transfer their producers' rights to an unreasonable and unnecessary extent.

For many producers, revenue received via Copydan and PRD is crucial to their overall financial position and, by extension, to the individual production companies' ability to allocate resources for innovative thinking, creative activities and the development of new, exciting content formats and productions for the pleasure and benefit of viewers, Danes especially. It must therefore be ensured that producers continue to hold the rights related to this revenue and that these rights continue to be handled through Copydan.

In 2022 PRD continued working on getting a number of broadcasters and streaming services to acknowledge the producer's right to remuneration from tv-distributors and aggregators. This effort is a top priority for PRD, as the supplementary revenue greatly determines producers' opportunities

for continuing to produce good Danish content. The work is being carried out in cooperation with the individual producers and the Danish Producers' Association and will continue in 2023.

3. Management areas

PRD primarily manages rights in the areas related to the provisions governing extended collective licence in the Danish Act on Copyright (sections 13, 17, 30a, 35 and 50(2)), and compensation for the reproduction of audiovisual content onto removable media (private copying); see sections 39-46a of the Danish Act on Copyright. The organisation represents both Danish and foreign holders of rights to TV and film productions.

PRD does not enter into agreements with users of audiovisual content in its own right. Accordingly, the organisation's work consists primarily of distributing the rights revenue collected via Copydan, which has been mandated to license the rights managed by the organisation. The organisation then also distributes rights revenue received from foreign cooperation organisations.

By far the bulk of the rights revenue distributed at PRD relates to TV distributors' retransmission and digital exploitation of TV content; for further details, refer to the specifications in Table 2, pages 22-23 in PRD's annual report for 2022, where these areas figure as Retransmission basic, Retransmission commercial and Digital services.

Another important area, particularly for feature film producers and distributors, is the licensing of feature films for schools. Effective as of 2018 an agreement was concluded permitting schools to stream feature films via CFU's streaming service, MitCFU. The service offers a broad range of Danish and foreign titles suitable for use in schools. This agreement replaces the former one, which primarily covered the use of DVDs in schools.

PRD additionally manages rights in a few smaller areas such as TV for seafarers, TV for the military, DR Archives and other areas, and has given Copydan a mandate for this purpose.

As well as distributing rights revenue on an individual basis, PRD also manages the distribution of collective revenue received as compensation for the lawful private copying of audio-visual content on removable media (blank media). This area currently constitutes a limited portion of the total funds managed.

4. Distribution policy

The board of PRD adopted a general distribution plan regulating the distribution of revenue in all PRD's revenue areas.

The fundamental distribution principle at PRD for retransmission revenue is actual consumption, with duration and viewing figures being the two key parameters for calculating the rights revenue to be distributed.

In principle revenue is distributed in respect of TV channels with a certain reach, as distributing revenue in respect of all available TV channels would be administratively and financially cumbersome, and this would be disproportionate to the revenue for channels that have only very limited reach and/or viewing figures.

In 2022 in the retransmission area for the royalty year 2021, disbursements were made to Danish and foreign right holders regarding DR1, DR2, DR Ramasjang and TV2 Danmark and to Danish right holders regarding TV3, TV3+, TV3 Puls, TV2 Zulu, TV2 Charlie, TV2 Fri and Kanal 5. The reason that revenue is disbursed only to Danish right holders regarding the commercial channels is a decision made by the Copyright Licence Tribunal that addressed this problem, among other issues.

The revenue that constitutes compensation for legal copying for private use and which is individually distributed is distributed to Danish and foreign right holders alike on the basis of the central disbursement channels mentioned above (DR1, DR2, DR Ramasjang, TV2 Danmark and TV3).

Revenue as regards digital exploitations such as StartOver is distributed to Danish and foreign right holders on the basis of reporting received from Copydan, which receives data direct from TV distributors. The revenue is thus distributed across TV channels without consideration for which channels are disbursement channels otherwise. As huge volumes of data are involved, a triviality limit has been introduced to avoid revenue being distributed to AV productions with very modest levels of activity.

In a few smaller areas, Copydan receives only random sample reporting, which thus forms the basis for distributing rights revenue to Danish and foreign right holders.

5. Rights system

The disbursement of rights revenue to Danish and foreign right holders alike is contingent on the individual right holders having claimed their rights to individual AV productions.

This means that prior to the disbursement of rights revenue Danish and foreign right holders are made aware that they should claim their rights to the works registered as having been exploited and thus as being entitled to the distribution of rights revenue. Once right holders have claimed their rights, the revenue is disbursed to them.

There will always be a few AV productions to which the right holder cannot immediately be traced, and in such situations a specific right holder cannot be asked to claim his/her rights. These AV productions are put on a list of unclaimed works available for right holders to view. On this basis Danish and foreign right holders can let it be known that they hold the rights to the otherwise unidentified productions.

In the event that several right holders claim to hold the rights to the same AV production, the production becomes the subject of a conflict, and the parties involved will be asked to clarify who holds the rights to the said production so payment can be disbursed to the correct right holder. The management organisation does not resolve such rights conflicts, but assists the parties with their handling of the case.

6. Non-distributable and undisbursed funds

Non-distributable and/or undisbursed funds at PRD may be due to three circumstances:

- the management organisation has been unable to identify the right holder
- the management organisation has identified the right holder, but been unable to trace the right holder
- the management organisation has identified and contacted the right holder, urging the right holder to claim its rights, but the right holder has not done so despite repeated requests to this effect

The two latter examples are not cases of genuinely non-distributable funds, but rather of the funds not being disbursed because the management organisation has had no recipient to which to disburse the revenue, despite the fact that the identity of the right holder to the production is known.

It follows from PRD's rules that when three years have elapsed from the expiry of the year to which the rights revenue relates, and these funds still remain non-distributed or undisbursed, they become time-barred and can no longer be individually claimed. The general meeting of PRD decides on the use of time-barred funds; see article 9.4(11) of the statutes.

At PRD's general meeting in 2022 it was decided to redistribute all of the time-barred funds in 2022, as the allocated reserve fund to cover any future legitimate claims from right holders already had reached the allowed maximum according to PRD's general policy on the use of un-disbursable funds. The re-disbursed funds were disbursed on the business area the funds are concerning according to the regulations on the area.

7. Collective funds

PRD receives rights revenue from Copydan KulturPlus on behalf of TV and film producers for the lawful private copying that takes place in Denmark. Under the act, two-thirds of the revenue received is distributed individually to Danish and foreign producers that have supplied productions to Danish TV stations. The remaining third of these funds is distributed collectively through a support fund managed by a sub-committee appointed by the board.

The objective of the support fund is to promote film as a cultural medium, both nationally and internationally. Support is granted to projects that preserve, develop and benefit the film medium and the TV and film industry that produces moving images (film, TV and similar).

Anyone can apply for support from the fund. The applications must relate to industry-relevant initiatives that can promote film and TV as cultural media, both in Denmark and abroad. Danish film and TV are the prime focus of support.

In 2022 PRD granted support in the amount of DKK 1,810,897. A list of those who received support can be found on PRD's website. The committee that considered applications in 2022 consisted of Anders Kjærhauge, Søren E. Jakobsen and Mads K. Jørgensen.

8. Payment frequency

Disbursements are made four times a year. The disbursements in June, September and December are primarily main distributions and relate to the royalty year prior to the disbursement year for all business areas. The March disbursements relate primarily to previously unclaimed rights revenue, for which reason the amounts disbursed are smaller and may relate both to the year prior to the disbursement year and to earlier years.

PRD receives rights revenue for Danish productions used abroad. This revenue relates primarily to retransmission and blank media and represents a modest portion of PRD's total turnover. Rights revenue is typically disbursed in March and September along with the other smaller disbursements.

9. Payment deadline and reasons for delay

In 2022 PRD was able to distribute rights revenue in most business areas within the time limit.

However, for revenue to be distributed and disbursed within the nine-month time limit prescribed in section 15 of the Act on Collective Management of Copyright and Related Rights, all reporting on and payments for the use of AV productions in relevant areas must have been received well within this time limit. For example, in the digital area – StartOver and Catch-Up – which relies on large data volumes and where considerable resources must therefore be expended to ensure correct individual distribution, it has proved impossible in 2022 to complete the processing of reported data within the nine-month time limit. Accordingly, this rights revenue relating to the 2021 rights year was not disbursed until December 2022.

10. Time-barred funds

At the end of 2022 the rights revenue for 2019 still undisbursed became time-barred. In addition, in 2022 PRD received a few payments relating to earlier years. This revenue also became time-barred at end-2022.

The general meeting of PRD decides on the specific use of time-barred funds.

11. Legal structure

PRD is a members' organisation owned by Danish TV and film producers as well as distributors.

PRD is headed by a CEO and by the organisation's board. The supervisory function according to Act on Collective Management article 8 is undertaken by the board of PRD and the board has been assigned the authorities of the Act on Collective Managements article 6 section 5(6-9).

12. Expense policy and policy for cost deductions

Administration costs are deducted in advance from the remuneration received prior to distribution and disbursement to right holders. Until 31 December 2020, administration costs were collected in connection with each disbursement to right holders. As far as disbursement of remuneration for the royalty year 2019 and previous royalty years is concerned, administration costs continue to be offset against each disbursement to ensure right holders are treated equally irrespective of the time of the claim and disbursement of funds.

Prior to a given calendar year a budget is drawn up for PRD's total administration costs and approved by the board. Danish and foreign rights holders carry their share of the costs on equal terms.

As described above, the budgeted administration costs are deducted in advance from the remuneration received prior to distribution and disbursement to right holders. The main distribution for a royalty year (2021), which is made in the subsequent calendar year (2022), must cover all costs of administration for the calendar year (2022).

Administration costs are distributed proportionately between the various business areas, based on an average of the two preceding royalty years.

Once a calendar year (2022) has ended and the calculated administration costs turn out to deviate from the budgeted costs, the deductions made by business area are correspondingly adjusted by means of the same distribution key used for the first budget-based deductions. The distribution keys are thus frozen once and for all and are not changed. The difference in administration costs will be regulated in connection with subsequent distributions concerning the same royalty year, provided this is possible.

Funds received from abroad do not go towards covering the administration costs.

The budgeted administration costs and the administration costs later incurred by PRD are carefully assessed in the interest of running a cost-effective administration and thus optimising the right holders' financial position.

13. Investment and risk policy

It has been decided not to make investments that could potentially reduce disbursements to right holders, for which reason no funds are invested in securities. Undisbursed funds are placed in deposit accounts with Nykredit Bank A/S or the Tax account of PRD at SKAT (Danish Customs and Tax Administration). Through Nykredit Realkredit A/S's ownership of Nykredit Bank A/S, the bank is essentially covered by the 'Systemically Important Financial Institution' (SIFI) rules and thus subject to stricter capital adequacy requirements.

It is imperative that the board and the administration continuously minimise the risk associated with managing right holders' funds, an aim reflected not only in the investment policy but also in the daily discharge of the administrative duties.

The management organisation's general investment and risk policy is approved at the annual general meeting of PRD.

14. Supervisory function

In 2022, the CEO of PRD, supervised by the board of PRD, oversaw the day-to-day management of PRD.

In 2022 the board of PRD held four meetings, and the various committees also held separate meetings. In addition, there have been regular meetings between the chairman of PRD and the CEO of PRD.

15. Remuneration of management and board

In 2022 the total remuneration paid to the board (supervisory function) and the executive board (responsible for day-to-day management) amounted to DKK 1,727,089.

16. Affiliations with other collective management organisations

PRD is a member of Copydan's four AV organisations (Copydan Verdens TV, Copydan AVU-Medier, Copydan KulturPlus and Copydan Arkiv). PRD licenses TV and film producers' rights through Copydan. Copydan pays the TV and film producers' share of the rights revenue to PRD, which is then responsible for ensuring the correct individual distribution and other use of the rights revenue.

PRD cooperates with foreign management organisations.

Cooperation in the retransmission area is based primarily on a reciprocal agreement concluded with AGICOA, a global management organisation that represents the majority of foreign right holders in this area and in the TV in public venues area.

In the private copying area, a reciprocal agreement has been concluded with 12 foreign management organisations. In addition, representation agreements have been entered into with six companies/organisations, which means that PRD represents these companies in the blank media area in Denmark (including the American majors).

A full list of the companies/organisations with which PRD has agreements can be found on PRD's website.

17. Money in and out of PRD

Tables 1-5 have been drawn up for the purpose of showing the flow of money in and out of PRD. Starting from 2018 the tables constitute an integral part of the audited annual report, to which reference is made (see pages 17-27 of PRD's annual report for 2022). A descriptive review of the individual tables is provided below as a supplement. In connection with the changed method of collecting administration costs described in paragraph 12, the tables have also been restated relative to prior years to reflect this change.

Table 1

Table 1 provides a general overview of debt developments from start- to end-2022 by type of use (business area) and royalty year as well as a further specification of amounts disbursed in the year.

'Debt at 31 December 2021' reflects total amounts received but not yet disbursed to right holders as of the cut-off date, that is, amounts owing to right holders by type of use (business area) and royalty year.

'Adjusted 2022' represents funds allocated as a result of board decisions made during the year.

'Payments received 2022' includes amounts received in 2022, that is, amounts paid into the organisation's bank accounts by type of use (business area) and royalty year.

'Administration costs "from the top" 2022' are the administration costs, described in paragraph 12, that are deducted in advance from the remuneration received prior to distribution and disbursement to right holders.

'Financial income and expenses, net' represents total financial income and expenses for 2022. Financial income and expenses for the financial year 2022 are proportionately added to/deducted from funds received for the individual business areas in the corresponding royalty year and are included in the subsequent distribution of funds.

'Reallocated funds' comprises the funds time-barred at end-2021 and which the general meeting in 2022 decided to redistribute at the next main distribution.

‘Time-barred funds’ are the funds that were time-barred at the end of 2022 and whose use must be determined by the general meeting in 2023.

‘Disbursed’ includes all amounts disbursed in the financial year 2022. The amount disbursed is specified in further detail in ‘Total administration costs’ for royalty years up to and including 2019, ‘Adjustment concerning reorganisation 25%’ for royalty years up to and including 2019, ‘Cultural funds’ and amounts ‘For individual disbursement’. In the table, ‘Total administration costs’ and ‘Adjustment concerning reorganisation 25%’ are also stated as a percentage of the total payments received by type of use (business area) for the financial year as a whole.

Finally, ‘Debt at 31 December 2022’ to right holders has been calculated by type of use (business area) and royalty year.

Table 2

Table 2 provides a general overview of all types of use (business areas) for the royalty years 2021 and 2022 independently of financial year. All historic transactions up to and including 31 December 2021 are thus included.

‘Payments received’ includes amounts received through 31 December 2022, that is, amounts paid into the organisation’s bank accounts by type of use (business area) and royalty year.

‘Adjusted’, ‘Administration cost “from the top”’, ‘Reallocated funds’, ‘Financial income and expenses, net’, ‘Disbursed’ and ‘Debt at 31 December 2022’ follow the specifications under Table 1.

‘For distribution’ specifies the portion of received revenue that can be distributed to right holders, and for cultural funds and collective funds, respectively. ‘Distributed’ specifies the portion of ‘For distribution’ that right holders can claim and that can subsequently be disbursed. ‘Non-distributed’ are funds remaining for later distribution. Some amounts may remain undistributed because the distribution basis for a given area has yet to be calculated or, alternatively, because the organisation received revenue after the latest distribution was completed.

Table 3

Table 3 provides a general overview of amounts ‘For individual disbursement’ in 2022 to other collective management organisations by type of use (business area) and royalty year. The table contains amounts disbursed in the financial year 2022 in respect of the royalty year 2021.

Table 4

Table 4 provides a general overview of ‘Payments received’ in 2022 from other collective management organisations by type of use (business area) and royalty year.

Table 5

Table 5 contains information for use in connection with the submission of information to Copydan in accordance with 'Members' decision regarding policies, audits, etc'. The table shows the distribution of disbursed funds, broken down by the four Copydan organisations from which PRD receives revenue.

18. Sub-report on use of the deductions made for social, cultural and educational purposes

In 2022 a deduction for cultural purposes was made from the 2021 revenue. The deduction amounted to DKK 12.4 million to the Danish Producers' Association and RettighedsAlliancen, respectively. The figure that can be found in the above-mentioned Table 1 under the heading 'Cultural funds'.

Both organisations work to improve the political and financial framework conditions for the film and TV industry in Denmark, work that benefits Danish and international right holders alike.

Use of cultural funds by the Danish Producers' Association

The year 2022 was in many ways an "annus horribilis" for Danish producers and the cultural funds granted by PRD was essential in coping with the many different challenges.

At the end of 2021 little did the producers know, that they in 2022 would face a more or less total stop for development and production of tv-series from the streaming services.

The streaming services refused to develop and produce under the agreement for rights payment negotiated between the Producers Association and Create Denmark. Although the Producers Association quickly realised that the agreement had to be renegotiated it took nearly a full year before Create Denmark finally managed to accept new individual agreements with Netflix, Viaplay and TV 2 – the main investors in scripted content in Denmark.

The result was - and still is - devastating for the industry, and The Producers Association used many resources struggling to negotiate new agreements.

The production stop was only one of the major challenges in 2022.

During spring the organization worked hard to influence the political negotiations on a new Media agreement and partly succeeded. A united industry managed to convince the politicians to introduce a streaming levy in order to help financing Danish feature- and documentary films – but unfortunately the agreement was based on a very small majority in parliament and did not secure the necessary stability in the market.

An election in the autumn 2022 resulted in a new government and the Producers Association realised that the streaming levy had to be changed in order to secure future investments in Denmark from the international streamers and started a campaign. We managed to influence the government

and a new Media agreement will be negotiated in 2023 balancing an obligatory levy with incentives to invest.

The election also postponed a new Film agreement, but the Producers association started preparing for the negotiations that will take place in 2023. The result is of major importance for especially the financing of feature- and documentary films – both of them under heavy financial pressure.

The tv market showed the first signs of a decline in demands for content due to the growing economic uncertainty and a structural change from flow-tv to on demand. The latter causing the broadcasters to put less slots up for production. Both factors had an impact on the tv-producers business. The Producers Associations' efforts to influence the political decisions was made possible by the funds from PRD.

During 2022 the Producers Association started negotiations with DR and TV 2 in order to secure better terms for the independent producers especially on rights. This was done in close and valued collaboration with PRD.

The collaboration with PRD was also important in the negotiations with a new union of DOP's, production designers and editors – who wanted a new and separate rights position on top of the collective bargaining agreement. Such demands were of course an extra strain on the negotiations with the streaming services but we managed to make ends meet.

PRD and the Producers Association also strengthened our cooperation dealing with Copydan. Structural changes in consumers behaviour reduces the income from retransmission and makes it necessary to renegotiate the distribution of funds between rightsholders. The process started in 2022 and will continue into 2023 - the result being of major importance to the producers.

The Producers Association continued to build up research and documentation of the industry. It was done in many areas such as export, employment, sustainability, capacity, and work environment. All of this in order to build a strong brand to the industry - making it easier to influence politics and attract the necessary and qualified workforce.

In addition to activities aimed at promoting the framework conditions for producers, many resources have been spent in 2022 on strengthening the industry identity and the producer's role. This has been reflected in our annual events – Copenhagen TV-festival, Masterclasses, The TV Price, the TV commercial award show "True Awards" and the games award "Spilprisen".

Furthermore, the Producers' Association has continued its training and capacity building activities aimed at upgrading the qualifications in the Danish production environment. This has among others included courses in management for the TV industry, workshops on occupational health and stress management and an event on green transition on TV productions.

2022 was in many ways a challenging year for producers, and The Producers Association saw a small decline in members – down from 140 to 138.

Use of cultural funds by RettighedsAlliancen

Illegal upload and use of films, series etc. increases in extent when it comes to online sharing platforms such as Facebook, YouTube, TikTok etc. In 2022, Rights Alliance gained access to several dismantling tools at Meta (Facebook and Instagram) and Google (YouTube). At Meta, the upload of 9,693 films was blocked, all of which were films that Rights Alliances' members have the rights to. Rights Alliance is in dialogue with TikTok about gaining access to similar tools. The access to these enforcement tools is a result of the extensive work with the EU Copyright Directive Article 17, which was implemented in Denmark in 2021.

In 2022, Rights Alliance also focused on password hacking and the illegal sale of Danes' access credentials, which are infringed to access content services such as Netflix, Disney+, TV 2 PLAY, etc. The monitoring of forums, where these illegal accesses can be bought, shows that this is a highly organized form of crime. In addition to monitoring hacker forums where this information is put up for sale, Rights Alliance had the first Dane convicted of hacking and selling ordinary Danes' access credentials to content services in 2022.

In 2022, five of the seven ringleaders behind the illegal Danish file-sharing service, Asgaard, were convicted. In addition, 2022 also marks the year in which verdicts have been handed down in the first "user cases", which cover cases against Danes who are systematic users of illegal file sharing services. The cases show that the fight against the illegal market has taken a new step, as it is no longer just the ringleaders who are held accountable, but also the users of illegal services. Today, the police handle the cases efficiently and competently and in good cooperation with Rights Alliance. More criminal cases are on its way in 2023.

The Code of Conduct agreement between Rights Alliance and The Telecommunications Industry Association in Denmark was revised in 2022 with the goal to make the cooperation and blocking of illegal sites more effective. The revised agreement reads, among other things, that the Telecommunications Industry Association in Denmark can now download updated lists of websites covered by blocking orders automatically. In addition, the Code of Conduct now covers all websites, even if they are not currently popular in Denmark. This makes it easier to stop illegal websites faster and more effective.

Rights Alliance was also active on information and campaign work in 2022. In spring, Rights Alliance launched a nationwide film competition for primary schools. 25 classes participated and competed to make the best film about 'rights'. This resulted in 102 films, where the winning class won a tour at Nordisk Film, a joint lunch, and a cinema trip. In late summer 2022, Rights Alliance's campaign Os Der Elsker Film was relaunched to remind Danes to watch films and series legally and to inform them of the consequences of doing so illegally. Through the sharing and advertising of graphics on social media, a total of 607,977 unique people were reached, and 10,536 interactions were created on the posts. The great results led to another 'boost' of Os Der Elsker Film in December 2022. This time, 484,000 unique people were reached, and 7,714 interactions were created. Os Der Elsker Films' campaign film was also shown in a large part of the country's cinemas, where 144,630 cinemagoers saw the campaign film.