

THE MEDIATION OF THE *COMMISSION DE CONTRÔLE DES ORGANISMES DE GESTION DES DROITS D'AUTEUR ET DES DROITS VOISINS (CCOGDA)*



The Ordinance of 22 December 2016 transposing the European Directive on collective management (n°2014/26/EU) provides, in the French Intellectual Property Code, for the possibility for collective management organisations and independent management entities to refer to a mediator disputes relating to authorizations of multiterritorial exploitation of online rights in musical works.

This mediation, which stays the statute of limitations applicable to civil and administrative actions, aims at facilitating or enabling the amicable resolution of disputes.

The questions and answers below aim at helping you better understand such mediation procedure.

WHO IS THE MEDIATOR?

The mediator is appointed within the *Commission de contrôle des organismes de gestion des droits d'auteur et des droits voisins* (also called « CCOGDA »).

Currently, the mediator is Mr. François Hurard, appointed in March 2017 for a three-year period.

HOW TO REFER A DISPUTE TO THE MEDIATOR?

You can refer the dispute to the mediator either alone, by a simple application, or with Sacem, by a joint application.

Such application must contain certain information, detailed in Article R.321-26 of the French Intellectual Property Code.

WHAT HAPPENS DURING THE MEDIATION PROCEDURE?

1. What are the next steps after referral to the mediator by a single party?

As soon as a dispute is referred to him, the mediator must inform the other concerned parties within an eight-day deadline.

The parties are then imparted a 30 working day deadline to send their comments to the mediator and to the applicant. Such deadline can be renewed once for the same duration.

2. What are the following steps?

The mediator has a three-month deadline to carry out his mission. Such deadline can be renewed once for the same duration, at the request of the mediator and with all parties' consent.

It hears the parties, separately or together, as well as any person whom he feels the need to hear. Such parties and persons may be assisted by the person of their choice.

WHAT HAPPENS IF THE MEDIATION ENDS IN AN AGREEMENT?

The content of an agreement between the parties, even partial, gives rise to a document signed by them and the mediator. Such document specifies the measures to be undertaken to carry it out.

The mediator sends this document to the President of the CCOGDA and informs him of the action taken by the parties. The President of the CCOGDA then provides such elements of information to the Minister of Culture.

WHAT HAPPENS IF NO AMICABLE SOLUTION IS FOUND?

If no agreement could be found between the parties, the mediator draws up a report setting out the reasons for such failure and gives a copy thereof to each party.

The mediator can issue a recommendation. It is notified to the parties who then inform him, within a three-month deadline, of the actions taken following such recommendation.

The mediator sends the report and his possible recommendation to the President of the CCOGDA who then provides such elements of information to the Minister of Culture.

IS THE PROCEDURE CONFIDENTIAL?

Within the framework of the mediation procedure, a party can avail itself of business secrets. It draws the mediator's attention to the information, documents or parts of documents that it considers covered by such secrets and which can, as a result, neither be rendered public nor disclosed to the other parties.

The statements gathered by the mediator can neither be presented nor cited by a party without the consent of the party that has presented them, in another mediation, arbitration or court procedure.

The mediator's findings cannot be presented by the parties, except those made public.

- This mediation mission is provided for by [Article L.327-1, 3° of the French Intellectual Property Code](#) and its procedure is detailed in Articles [L.327-6](#) and [R. 321-35 à R. 321-44 of same code](#).