

# Management Report for financial year 2016 40<sup>th</sup> financial year

## 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 by film producers. 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 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 to be published in *Bundesanzeiger* (Federal Gazette). Certain uniform fee rates will also apply for activities outside Germany.

Outside Germany, GÜFA asserts the rights assigned to it for its administration either directly (Netherlands, partly Belgium, partly Switzerland, Denmark, Sweden, Finland) or through agency agreements with collecting societies or similar institutions (Austria, partly Switzerland, partly Belgium, Spain, Czech Republic, Latvia). In the Netherlands, GÜFA maintains a branch in Middelburg under the name “GÜFA Benelux”; it is entered in the local commercial register and is active in the Netherlands and Belgium.

On the basis of 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 amount determined at the end of a year is accordingly not approved by shareholders, but rather distribution of revenue is, since the amendment of the articles of association of GÜFA due to the new VGG as of 1 January 2017, 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 will in future advise the company, inter alia, when umbrella treaties are to be agreed and established, and which decides on the distribution plan, will consist of eight persons. Five members will be shareholders, and the other three members will be 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 2016**

Total revenue of € 4.00 million was realised in the 40<sup>th</sup> financial year (previous year € 5.20 million). The distribution amount that had accordingly decreased by around € 1.14 million measures € 3.00 million (previous year € 4.14 million). The overall result from public film showing rights continues to be in decline, and fell by around K€ 232 in the past year (compared to a fall of K€ 308.5 in the previous year). The number of film showing centres (cinemas and/or cubicles) continued to fall. This trend also continued in the countries Austria, Netherlands and Belgium, Switzerland, Czech Republic, Latvia, Spain, Sweden, Denmark and Finland (GÜFA has been active in the latter since 2016). In these countries, GÜFA is represented by itself or by local collecting companies.

Revenue generated by exercising rental rights for authors and film producers also showed a decline due to the continued reduction in the number of video rental stores.

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. In addition to computers, it was also finally possible to secure contracts at the end of the year for smartphones and tablets. Follow-up payments to ZPÜ of not inconsiderable amounts by members associated with BITKOM can be expected in the following years. Further negotiations (including in relation to consumer electronics and blank media) are currently underway or court actions being taken.

At the end of 2016 an agreement was signed with VG BILD-KUNST regarding participation in reprography und BTX revenue from digital sources. This agreement fixes a participation both in the reprography revenue for the years 2001 to 2007 (former law) and then as of 2015, as well as in BTX revenue for the relevant devices. This led to generation of arrears payments of K€ 575 in 2016 (previous year K€ 201).

The ZPÜ on the other hand did not generate any significant revenue in the area of private copies (charges for devices and blank media) (K€ 41.0 compared to € 1.3 million the previous year).

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 226 film producers/holders of rights and other holders of copyright performance protection (previous year 236) and 178 film authors (previous year 180).

To enforce rights, monitor film screening centres 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 has deteriorated compared to the previous year. The balance sheet structure is nevertheless stable. The most important asset items are liquid funds totalling K€ 2,121.1 (previous year: K€ 3,150.1). This is equivalent to 94.7 % of the balance sheet total (previous year: 95.4%). The payment practice of GÜFA's contract partners continued to deteriorate in the year of the report. The number of insolvencies and unsuccessful enforcement attempts recording of financial status measures The number of insolvencies and unsuccessful enforcement attempts with recording of financial status measures 30 (previous year 60). Write-offs had to be undertaken totalling K€ 58 (previous year K€ 270.0). Further insolvency proceedings and write-offs are anticipated. On the liability side, the liabilities towards beneficiaries make up the largest part of the balance sheet total, at K€ 2,072.2 (92.5 % of the balance sheet total; previous year K€ 3,101.5 and 94.0 % of the balance sheet total).
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 lack of special payments by ZPÜ in the report year, there were, in contrast to the previous year, no additional advance payments were made to beneficiaries besides the regular advance payments. Revenues from the rights are lodged as fixed deposits exclusively with established banks in accordance with established principles of risk management.
3. The income situation deteriorated noticeably compared to the previous year. Even a continued decrease in expenses was not enough to compensate for the general falls in revenue. The absence of special payments by ZPÜ for previous years is a primary factor deserving mention, which in the previous year led to one-off revenue totalling € 1.3 million (previous year € 2.8 million). Revenues from public showings also fell by K€ 232.

## 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 generating continuing "future revenues", specifically for the areas of smartphones, tablets, consumer electronics, e-book-reader and data storage media. Following initial successes by ZPÜ in this regard (smartphones and tablets), the shareholders of the ZPÜ were finally able to agree on an internal distribution scheme at the end of November 2016. This applied to smartphones as of 2008, for tablets as of 2012 and for PCs as of 2015. After it become necessary to mix the quotas from the 2010 and 2015 studies, the shareholders of ZPÜ additionally receive for the years 2015 to 2017 an annual special payment of K€ 600. Announcement of the quota due to the individual shareholders is expected in early 2017. Arbitration proceedings have been commenced regarding all equipment and media liable for charges before the arbitration board of the German Patent and Trademark Office; in some cases the follow-up legal actions are pending before the Higher Regional Court in Munich and the Federal Court of Justice

Further uncertainty is due to technical changes that have 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. The application for admission filed by VG Media is still being examined.

## **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 company's financial and risk management measures 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, Deutsche Patent- und Markenamt, 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 account of 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.

With effect from 1 June 2016, the law on collecting royalties and associated intellectual rights by the collection societies (the *Verwertungsgesellschaftengesetz* or Collecting Societies Act, hereinafter referred to as "VGG") came into force. The consequences of the new law for our company were, inter alia, that certain tasks that had hitherto been performed by the shareholders' meeting have now become the responsibility of the membership meeting, or Council of Members, which in our case, however, will probably not be able to hold its inaugural meeting until March 2017. The fact that the Council of Members has not met so far does not in our opinion represent any breach of the statutory regulations in force, as such a meeting has to take place only once each year and a period of 12 months has not yet elapsed since VGG came into force. Nevertheless, the delay in holding the inaugural meeting of this new body means that no investment guideline has as yet been agreed, of the kind required under section 25 VGG and compliance with which would have to be verified by our auditor in accordance with section 57 (2) VGG in the context of his audit of the annual financial statement. In the absence of any agreement on an investment guideline, it was not possible to monitor compliance as part of the audit of the annual financial statement for 31 December 2016. Because VGG does not provide any transition regulations to the contrary regarding this matter, we assume that the first audit of compliance with the investment guideline agreed by then will take place for the accounting date 31 December 2017 in accordance with VGG. We therefore judge any risk in this area to be very low.

## **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, increased and will no doubt continue over the coming years. Efforts to secure more representation of rights outside Germany will continue.

Since 2016, GÜFA has also been operating successfully in Finland. We hope to be able to achieve complete and consistent remuneration for new distribution media. This will include above all charges for use of material through the Internet and from duplication for private and other purposes (devices and blank media charges). The most recent successes recorded by ZPÜ is concluding contracts for the relevant fees justify positive expectations for reliable revenue in this area in the coming years.

It furthermore also 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 amendments and the necessary modernisation of the legal framework.

After adjustment for the effects of one-time items and the currently not yet ascertained income from the distribution plan for PCs, we anticipate a once-off strong recovery in revenues for 2017. With a comparable cost structure, this will lead to a distribution amount that is also significantly higher than the previous figure.

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 3.4 % of the distributable result (previous year 2.8 %).

Düsseldorf, 22 February 2017

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