

FAQ

AUTHOR-PUBLISHER-ARBITRATION COMMITTEE (APAC)

1. What is the Author-Publisher-Arbitration Committee?

The APAC is an **internal dispute resolution body**, which was instituted by the General Assembly 2017 in the course of the legal re-organisation of the publishers' pay-outs participation.

2. What are the APAC's responsibilities?

The APAC is **responsible for disputes between authors and publishers on the question of whether a publishers' service has been provided**. The provision of publishers' services is a requirement for publishers' participation to GEMA. The APAC decides whether a publisher should, for individual works which are subject to the settlement ruling, continue to be participating in the distribution of royalties by GEMA. However, the question whether the cancellation of a publishing agreement can come into force, can only be examined by the courts of law.

3. What is a publisher's service?

The publisher's service under the regulations of GEMA, includes the reproduction and distribution of works pursuant to the German Publishing Act. Separately, publishers' services can also be provided via services in the areas of promotion and exploitation of the work, financing and production or service and administration. The area of service and administration specifically includes the necessary communications with GEMA in relation to the work and its usages, also in the interest of the author (e.g. through the registration of the work, the verification of accounting documents, and complaint handling). A publisher's service that is provided in only one of these areas can be sufficient if it is overall substantial.

4. What are the resolution options, if the publishers' service provisions are not being disputed?

In this instance the parties need to resolve the dispute before of a court of law. This is, for example, the case when there's a dispute between the author and the publisher on the question whether a publishing agreement is in force, or how a specific clause in the publishing agreement should be interpreted. In addition there is also always the option to reach an out-of-court settlement and to submit a joint declaration to GEMA.

5. Does APAC also make decisions on pay-outs in the past?

No, the APAC only rules on pay-outs which have taken place after the pay-out-block was implemented and will take place in the future. These pay-outs will be distributed at the end of the proceedings according to the settlement ruling, if the parties do not pursue a legal action before a court of law.

For past pay-outs, authors and publishers already had the option to confirm pay-outs respectively to correct pay-outs via payment reversals through the Electronic Confirmation Process ("EBV"). If a party is not satisfied with the outcome of the Electronic Confirmation Process, then the question of the participation in relation to past pay-outs will need to be taken to a court of law. APAC does not rule on this question.

6. Who can invoke the APAC?

Both the author and the publisher of a disputed work can invoke the APAC, as long as they are members of GEMA.

7. How can the APAC be invoked?

Pre-requirement for the invocation of the Author-Publisher-Arbitration Committee pursuant to Art 10 of the distribution plan, is that GEMA has blocked pay-out for the work, for which there is a dispute regarding the fulfilment of the publishers' services. Before invoking the Author-Publisher-Arbitration Committee, the author must therefore request GEMA to put out a **pay-out-block** (so called 'Werkanteilssperre') for their publisher.

Once the pay-out-block is in place, both the author and the publisher will be notified accordingly by GEMA. With this notification the author and the publisher will be informed of the **6-months-deadline**, during which they can invoke the Author-Publisher-Arbitration Committee by using the **'Application for the invocation of the Author-Publisher-Arbitration Committee' form**.

The invocation must include a **justification**, why, in the view of the claimant either publishers' services have or have not been provided, and **5 copies of all relevant documents, in particular the publishing agreement**.

Before invoking the APAC, the claimant must transfer to GEMA, the arising case lump-sum of EUR 600 plus 19% VAT, i.e. the **total amount of EUR 714**. A copy of the transfer voucher also has to be submitted to GEMA with the invocation.

8. Where is the 'Application for the invocation of the Author-Publisher-Arbitration Committee' form available?

The form is sent by GEMA with the notification in which the 6-months-deadline for the invocation is set.

9. Is the invocation of the Author-Publisher-Arbitration Committee the only option to establish whether a publisher's service has been provided?

No, the author and the publisher can settle this question by mutual accord and come to an agreement. The author and publisher should then submit a joint declaration to GEMA, which outlines the outcome of the agreement, particularly the degree to which in future the publisher will participate in the distribution of the royalties for the works of the author. Alternatively, there is the option to bring the case before a court of law.

10. What is the difference between the invocation of the APAC and pursuing the case before a court of law?

The settlement ruling shall be issued within 6 months after the receipt of the invocation, the conclusion of a legally binding ruling on the other hand often takes several months or even several years. The settlement ruling of the APAC is also not necessarily final. After the settlement ruling has been decreed, the parties can still bring a lawsuit, via which they can access another examining body. Furthermore costs arising from the invocation of the APAC are lower than those for legal proceedings.

11. Can the parties invoke the APAC and simultaneously bring a lawsuit?

No, once the author or the publisher has invoked the APAC, it is not possible to bring a lawsuit until the settlement ruling has been decreed. It is equally not possible to invoke the APAC, once the parties have issued legal proceedings before a court of law.

12. What happens after the 6-months-deadline set by GEMA to the claimant after the pay-out-block?

If the author and the publisher have not issued a joint declaration, nor invoked the APAC, nor provided proof, that they have brought the case before a court of law, then GEMA is entitled to release the blocked pay-out to the party who was previously registered to be paid out.

13. What happens, if several authors assert the non-fulfilment of publisher's services in relation to one publishing agreement?

In this case each author-publisher legal relationship must be considered and decided upon separately. Each author must therefore apply individually in order to invoke the APAC. This applies independently of whether several authors participating in one work, have entered separate agreements with one or several publishers.

14. Does the Author-Publisher-Arbitration Committee consider the non-fulfilment of a publisher's service for all publishing agreements, which exist between the author and their publisher?

No, the Author-Publisher-Arbitration Committee must decide separately **upon each author-publisher legal relationship and upon each publishing agreement**. If the author and their publisher have signed several agreements, then the question of non-fulfilment of publisher's services must be considered separately for each agreement. For each of the invocations to the Author-Publisher-Arbitration Committee, a case lump-sum payment will be due. Something different only applies to single title agreements of the author and the publisher that are concluded under a master agreement.

15. Do costs arise for the invocation of the APAC?

Yes, in order to invoke the APAC, the claimant has to pay to GEMA a case lump-sum of EUR 600 plus 19% VAT, i.e. a **total amount of EUR 714**. The case lump-sum must be transferred before the application to invoke the APAC is made and a copy of the transfer voucher must be attached to the application. Under certain circumstances, other costs may arise, e.g. costs for an external expert, or the own costs of the parties. Travel costs and cash expenses, incurred by the Chairman and the competent members of the APAC, are reimbursed by GEMA.

16. Why is a case lump-sum payment due?

The case lump-sum is to be paid in order to compensate the Chairman and members responsible for the ruling for their efforts.

17. Does the claimant incur the cost irrespective of the outcome of the proceeding?

No, the bearing of the cost is decided in accordance with the decreed settlement ruling by the Arbitration Committee. E.g. if the claimant prevails in the arbitration and therefore the defending party is completely liable, the latter will have to bear the case lump-sum and, if applicable, additional costs. The claimant is, in this case, entitled to a repayment of the case lump-sum paid by him and, if applicable, other costs from the defendant. The claim regarding the case lump-sum will be compensated via the GEMA member accounts of the parties. The claims for other expenses (lawyers fees etc.) must be compensated between the parties.

18. Where shall the application for the invocation be submitted?

The application for the invocation to the APAC should be addressed to GEMA. The address is included in the application form 'Application for the invocation of the Author-Publisher-Arbitration Committee'.

19. What happens after the application for the invocation of the Author-Publisher-Arbitration Committee has been submitted?

GEMA will first consider whether the application contains all the necessary information and whether all required documents has been attached to the application. Thereafter GEMA forwards the invocation promptly to the Chairman, who forwards the invocation to the responsible members of the Author-Publisher-Arbitration Committee. The Chairman also informs the defendant about the invocation and requests them to give their views within a month of receipt of the notification. Furthermore the Chairman can demand that the parties provide additional written statements and documents.

20. Will there be an oral hearing?

An oral hearing is not necessarily required for the APAC but can be requested by the parties or by the Chairman of the APAC, if the Chairman deems it to be necessary. The Chairman informs the relevant parties of the date and venue of the oral hearing.

21. How does the proceeding end?

The proceeding ends with the decree of a written settlement ruling. The settlement ruling must be justified and shall be decreed within 6-months after the APAC has received the invocation.. In the settlement ruling, the APAC will adjudge whether the publisher has provided publishers' service and therefore should continue to be participating in the distribution of royalties for the work. If the APAC is divided on whether a publishers' service has been provided, the APAC shall make its decision based on a simple majority.

22. Does the APAC have to decree a settlement ruling within the 6-month period after the submission of the invocation to the arbitration committee?

The APAC shall pass a written settlement ruling within 6-months from the receipt of the invocation by the APAC. During this period, the APAC shall process incoming disputes based on their urgency. Apart from content related aspects, the relevant dispute value, measured by the value of the blocked pay-outs, must be taken into consideration. Under certain circumstances, it is therefore possible that some settlement rulings are decreed only after more than 6 months, because other arbitration proceedings were more urgent.

23. How does the APAC decide whether a publisher's service has been provided?

The APAC takes a comprehensive deliberation into account. For this purpose economic conditions of the work's creation and exploitation, the content of the publishing agreement and the timeline since the creation of the work are taken into consideration. In more difficult cases an external expert may be involved for advisory purposes. However, the APAC does not adjudge the quality of the publisher's service or the publisher's strategy.

24. Does the APAC assess all claims which exist between the parties?

No, the APAC only adjudges whether a publisher's service has been provided and therefore whether the publisher is to participate in the distribution of royalties. Further claims, which exist between the parties, remain unaffected. Specifically, the APAC does not consider whether cancellation rights, withdrawal rights, revocation rights in conjunction with the publishing agreement exist. For these questions, the parties can take recourse to the ordinary courts of law. The APAC can however of course be called upon when the publishing contract has been cancelled due to non-fulfilment of the publishers' services. In this case, APAC adjudges whether the publisher's participation in the distribution of royalties with GEMA is justified. The legal effectiveness of the cancellation is however not considered.

25. Is the settlement ruling's decision on the pay-out final?

No, the unsuccessful party may assert a claim within 6 months after the decree of the settlement ruling before the ordinary courts of law. If the party does not assert a claim during this 6 months period, GEMA will distribute on the basis of the settlement ruling.

26. Do the pay-outs always remain blocked until the end of the 6-months-deadline following the decree of the settlement ruling?

The pay-out will only remain blocked, if both parties remain inactive until the end of the 6-months-deadline. If on the other hand, both parties accept the settlement ruling before the end of the 6-months-deadline by joint declaration to GEMA, GEMA will pay out according to the settlement ruling after the submission of the declaration. If the parties take a legal recourse to the courts, the pay-outs will remain blocked until a legally binding court ruling has been decreed. The blocking can thus remain in place for longer than 6 months.

27. How is the APAC made up?

The Author-Publisher-Arbitration Committee is composed of one representative of each of the three professional categories and of a Chairman. In addition, each member of the Author-Publisher-Arbitration Committee has a Deputy. The representatives of the professional category of composers and the professional category of lyricists only participate in decisions about disputes in which members of their respective professional categories are involved. Therefore, the APAC is always equally composed of an authors' and a publishers' representative. The professional category representatives and their deputies are appointed for a period of three years by the members of the Supervisory Board of the respective professional categories. The professional category representative of the publishers and their deputy do not necessarily have to be working for a publisher who is a member of GEMA. They must, however, have or have had their professional focus in music publishing.

The Chairman of the Author-Publisher-Arbitration Committee and his/her deputy must be qualified to hold the office of a judge and are elected by the representatives of the professional categories from a proposal list created by the Supervisory Board.

The Author-Publisher-Arbitration Committee is currently composed of:

Chairman: Prof. Dr. Jan Dirk Harke
Deputy Chairman: Christel Hengst

Professional category composers: Andreas Weidinger
Deputy: Prof. Karim Sebastian Elias

Professional category lyricists: Gregor Rottschalk
Deputy: Timothy Touchton

Professional category publishers: Dr. Heinz Stroh
Deputy: Andreas Meurer

More information can be found in the [Guideline for members](#)