PPCA Distribution Policy

Introduction

Phonographic Performance Company of Australia Limited **(PPCA)** is a non-profit organisation established in 1969 by Australian record companies. We are authorised by the copyright owners* to issue licences for the broadcasting, communication and public performance of copyright protected sound recordings and music videos.

This guide to PPCA's Distribution Policy explains how we collect licence fees for the use of sound recordings and music videos, and how we allocate and distribute payments to the copyright owners who have authorised us to issue licences on their behalf.

Legal Background

Under the *Copyright Act 1968* (the **Copyright Act**), the owners of copyright in sound recordings and music videos have certain exclusive rights in relation to that material, including the rights to:

- cause the sound recordings or music videos to be seen and/or heard in public (the **public performance** right);
- **broadcast** them; and
- transmit them by a range of other electronic means, including by making them available on the Internet (the right to **communicate**).

Generally, a person needs permission (usually in the form of a licence) from the copyright owner to do any of these acts in relation to a sound recording or music video that is protected under the Copyright Act. If a person does any of these acts without a licence, they may infringe the copyright in the sound recording or music video.

The copyright owners can grant permission for public performances, broadcasts and other uses of the protected sound recordings and music videos they own or control. However, under the Input Agreement signed by each copyright owner, PPCA is also authorised on a non-exclusive basis to grant licences to organisations and individuals to do some of these acts, and to collect licence fees in return.

Types of PPCA Licences

PPCA currently issues licences to organisations and individuals in the following categories:

- **Licences for the public performance of sound recordings** – these licences are issued for commercial and other activities that involve the public playing of sound recordings. These range from

* In the majority of cases, the **copyright owner** will be a record company that produces sound recordings, or another company that is a licensee or distributor for such a record company. In some cases, however, the copyright owner may be an individual who produces and self-distributes sound recordings.

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PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA LTD
LINKING BUSINESSES TO MUSIC MAKERS

PPCA PROVIDES LICENCES FOR THE PUBLIC USE OF SOUND RECORDINGS AND MUSIC VIDEOS PROTECTED BY COPYRIGHT. USERS MAY ALTERNATIVELY OBTAIN LICENCES DIRECTLY FROM ALL RELEVANT COPYRIGHT OWNERS.

small country theatres, dance studios and fitness centres to pubs, clubs, hotels and bars, and offices, professional premises, shops and chain stores.

- **Licences for the public exhibition of music videos** – these licences are issued where music videos are shown in public.
- **Music on hold licences** – these licences are issued to commercial operations that play sound recordings over their telephone systems to callers on hold.
- **Broadcasting licences** – these licences for the use of sound recordings and music videos are negotiated with and granted to television and radio broadcasters.
- **Online licences** – these licences cover the use of sound recordings in connection with certain online services, including simulcasting of radio broadcasts over the Internet, webcasting, audiovisual streaming and podcasting. We also offer licences covering the use of music videos in webcasts and simulcasts of television broadcasts.

PPCA is also continuing to develop licence schemes in other areas as new opportunities and potential new sources of licence fee revenue emerge.

Allocation and Distribution Policies

In summary, the process of allocating and distributing PPCA's annual licence fee revenue is as follows:

1) PPCA collects and totals all licence fee revenue received during the relevant Financial Year.
2) We deduct from PPCA's licence fee revenue the expenses of managing and operating our business (but excluding the IFPI subscription), leaving the **Distributable Amount** available for allocation and distribution to copyright owners and artists.
3) The Distributable Amount is notionally divided into various **Distribution Pools**, based on the sources of the licence fee revenue and/or the information (ie. logs) we have about how copyright protected sound recordings and music videos were used.
4) PPCA uses extensive airplay logs, or other logs that are available and relevant, to determine the percentage (the 'Track Pool Percentage') of the relevant Distribution Pool that should be allocated to each track or sound recording for copyright protected uses during the relevant Financial Year.
5) Following the allocation between local and international recordings in the relevant Distribution Pools (hereinafter referred to as the "Local Distribution Pool" and "International Distribution Pool" respectively), but prior to the actual distribution of any amounts, PPCA will deduct the IFPI subscription for the relevant Financial Year as follows:
   - From the Local Distribution Pool, a sum equivalent to 10% (ten percent) of the total IFPI subscription payable; and
   - From the International Distribution Pool, a sum equivalent to 90% (ninety percent) of the total IFPI subscription payable.
6) PPCA also deducts an amount equal to 2.5% of the Local Pool, and allocates these funds for charitable, educational and like purposes. Under this Scheme, all direct grants by PPCA for such purposes (which are recorded as expenses) are deducted from the overall amount available, and the balance is paid into the PPCA Performers' Trust Foundation. These direct grant expenses currently include activities run by such organisations as Arts Law Centre of Australia, The Australian Music Prize and The Song Room. Each direct grant is at the direction of the PPCA Board each year, and may not be awarded in some years.
7) We then multiply the Track Pool Percentage by the amount remaining in the relevant Distribution Pool (after IFPI and PPCA Trust deductions) to give a dollar amount for each track or recording.
8) These amounts are totalled and payments made to copyright owners and artists for their tracks and/or recordings.

Expenses – Under PPCA's Constitution and the Input Agreement that each copyright owner signs, PPCA is entitled to deduct from total licence fee revenue whatever amounts are necessary to pay the expenses of the conduct, management, promotion and operation of PPCA. The most important categories of expenses include the following:

- Salaries and associated costs.
- IFPI subscriptions.
- Information technology systems and support.
- Audit, accounting, recruitment, training, advertising and sundry office expenses.
- Printing, stationery, postage and couriers.
- Property related expenses.
- Legal.
- Purchase and processing of airplay logs.
- Telephone and fax.
- Travel and entertainment.
- Bad debts and debt collection expenses.
- Motor vehicle costs.
- Grants and other charitable expenditure – see item 6 under 'Allocation and Distribution Policies'.

PPCA also makes financial and in-kind contributions to Support Act Limited (**SAL**). SAL is the national benevolent fund established to provide assistance to Australian musicians, composers and associated workers. PPCA is represented on the Board of SAL, and supports SAL's aim to provide financial, legal and medical assistance to artists in need and their families.

Basis of accounting – Generally, PPCA uses accrual basis accounting. This means that revenues and expenses are allocated to the Financial Year in which the right to receive the revenue or the obligation to pay the expense actually arises. In very limited circumstances, revenue may need to be handled on a cash basis (ie. in the year in which it is actually received).

Distributor labels – In some cases, a label owned or controlled by a copyright owner is distributed by another company. In order to reduce PPCA's administrative costs, if the distributor company is a licensor to PPCA, PPCA will pay to that company any distributions in respect of the labels it distributes, unless the distributor company has advised alternate arrangements. PPCA will only pay distributions directly to the copyright owner where the distributor company is not a licensor to PPCA or where both the distributor company and the copyright owner advise PPCA in writing.

Overseas copyright owners – Where there is a local (Australian) copyright licensee or distributor for protected sound recordings owned or controlled by an overseas copyright owner, PPCA will pay any distributions to the local distributor. If an overseas copyright owner does not have a local licensee and has signed a PPCA Input Agreement, and copyright protected sound recordings owned by that company appear in the logs, PPCA will pay directly to the overseas copyright owner until a local copyright licence is in place.

Timing of distributions – PPCA normally makes one distribution annually in December. Any variation to this policy would only occur in exceptional circumstances.

Distribution cut-off date – This is the date on which PPCA generally "locks down" the information available to it for the purposes of making a distribution. For each Financial Year ending 30 June, the distribution cut-off date is usually the following 31 August (ie. two months after the end of the Financial Year). We can't guarantee that we

will be able to process any further information received after this date from licensors (or registrations under the Direct Artist Distribution Scheme), as doing so may cause delays in the distribution process, and potentially impact on our ability to make timely distribution payments to licensors and artists. While we urge you to provide information as often and as quickly as you can, you must get it to us before the distribution cut-off date if you want to be sure that it will be taken into account in that year's distribution.

A reminder about the distribution cut-off date will be included from time to time in PPCA's newsletters to licensors.

Distributions are final – PPCA's policy is always to pay out the full Distributable Amount by 31 December each year based on the information outlined above. This means that once they are determined by PPCA and paid out, all distributions are final and cannot be altered or revisited. We do not retain any reserve funds (so-called "Black Box" money) to pay out in respect of sound recordings or music videos that do not appear in the logs but that may have been broadcast or performed in public during the relevant Financial Year. The Copyright Tribunal has recognised that collecting societies must work from sample logs and that not every relevant use can or will be captured each year. We also do not hold any reserve funds to pay out in respect of sound recordings for which the copyright owner had not, prior to the applicable distribution cut-off date, provided all relevant information to PPCA. This is why it is very important for copyright owners to provide the information to us and ensure it is kept up to date (see below, **Obligations of Copyright Owners**).

Statements – PPCA sends out a statement with each payment to a copyright owner, which provides the following information (separately for sound recordings and music videos):

- The total earnings allocated to each track or video;
- The total earnings for each artist contracted to the copyright owner;
- The total earnings for the copyright owner; and
- In the case of repertoire eligible for the Direct Artist Distribution Scheme only – details of payments to artists under the Direct Artist Distribution Scheme (see below), along with details of any amounts that would have been payable directly to artists had they registered under that scheme.

Overpayments – If PPCA makes an error that results in an overpayment to a copyright owner or artist, we will notify the company or artist involved and request that the money be repaid as soon as possible, usually within 28 days of the date that we send the notice. If the money is not repaid, PPCA will deduct the amount of the overpayment from the next distribution to that copyright owner or artist.

Adjustment payments – If PPCA makes an error in a distribution on the basis of the information that has been provided to us (for example, if we incorrectly apply the information that copyright owners have provided about the countries with which a recording is connected), and this results in an underpayment to a copyright owner, then we will consider making an adjustment payment to the affected copyright owner from the subsequent year's Distributable Amount. If you believe PPCA has made an error of this kind, you must contact us by no later than 31 March in the year immediately following the December distribution (ie. within about 90 days after you receive your payment). Please note, however, that we will not generally make an adjustment payment unless the amount involved is $20 or more. Note also that errors in the payment of direct distributions to artists are handled differently by PPCA (see below, **Direct Artist Distribution Scheme**).

PPCA will not consider requests for adjustment payments based on information that had not been provided to us prior to the applicable distribution cut-off date. As outlined above, we pay out the total Distributable Amount each year on the basis of the information that we have as at that date, and we cannot revisit individual distributions on the basis of new or additional information.

Distribution Pools

There are currently three main Distribution Pools that PPCA uses for the purpose of dividing and allocating the Distributable Amount:

- **APRA Pool** – This Pool contains the licence fee revenue that PPCA allocates using the APRA airplay logs.
- **ABC (Rage) Pool** – This Pool contains the licence fee revenue that PPCA allocates using the logs of music video broadcast details supplied by the ABC.
- **SMA Pool** – This Pool contains the licence fee revenue PPCA receives from Satellite Music Australia for the use of copyright protected sound recordings in its subscription broadcasting services.

There is also a further separation between the revenue received for the use of copyright protected sound recordings and the revenue from the use of copyright protected music videos.

PPCA will use further specific Distribution Pools when the amount of licence fee revenue from a particular source is significant enough, and/or the logs and other information are sufficiently comprehensive, to warrant separate treatment. For example, we created a separate Distribution Pool for the licence fee revenue received from SOCOG for the use of sound recordings during the Sydney 2000 Olympics.

Allocation Process

The PPCA allocation process is based on extensive airplay logs for sound recordings. PPCA purchases radio broadcast logs from APRA, and APRA represents that the logs are almost a census of commercial radio broadcasting and of ABC metropolitan broadcasting. Please note that, at present, no 'regional only' ABC programs are included. The logs therefore reflect reasonably accurately the use of sound recordings in such broadcasting. For music videos (apart from the RAGE broadcasts by the ABC, for which we receive and utilise specific logs), the allocation process is based on APRA logs of music video programs and some other television programs in which music videos are used.

In the case of distributions relating to sound recordings used by commercial telecasters, the net income received will be apportioned on the basis of radio airplay logs received from APRA. Although inexact in regard to the use of particular recordings in television broadcasts, the logs do provide a broad basis on which allocations across stakeholders can be made and is the best distribution information currently available to PPCA. The availability of specific television broadcast data at a reasonable cost is under ongoing review, to determine a method of calculation which provides for a more accurate apportionment of these licence fees.

For the SMA Distribution Pool, the allocation is based on specific census logs provided by the broadcaster. In other cases, the allocation is based on the general broadcast logs purchased from APRA. All the logs are checked by PPCA to match the information in them to the relevant copyright owner and artist details held by us.

The logs are used to determine the extent and weighting of airplay of sound recordings during the relevant Financial Year. This determines the percentage of the relevant Distribution Pool that is allocated to a particular copyright protected track or music video.

In the case of classical music, PPCA does not yet have access to sufficiently reliable and extensive logs to make allocations on that basis. For the time being, therefore, market shares of classical CD sales are used as a reasonable proxy for the public performance and broadcasting of copyright protected classical music sound

recordings. As soon as PPCA is able to get reliable logs of classical music broadcasting at an economical price, we will base our allocations on those logs.

Direct Artist Distribution Scheme

Background – The Direct Artist Distribution Scheme provides an opportunity for principal Australian artists on protected sound recordings and music videos to obtain direct payment of a share of the net income collected by PPCA from the broadcast or public performance of those recordings and videos. The scheme only applies to eligible protected sound recordings and music videos (Australian Recordings and Videos), being those:

- in respect of which the Copyright Act 1968 creates public performance, broadcast and communication rights; and
- where the majority of the featured recording artists were Australian citizens or residents for tax purposes at the time the relevant recording or video was made.

For the purpose of the Scheme, an artist will be considered to be "featured" if the artist is entitled to be paid a royalty under their recording agreement.

The Direct Artist Distribution Scheme will not apply to:

- Protected recordings containing samples of Australian Recordings, or
- Sound recordings made for film or television programs, unless they are commercially released as sound recordings, or
- Non-featured Australian recording artists (eg session musicians), or
- Any persons who remix or sequence Australian recordings (eg recordings remixed and/or sequenced by DJs), although Australian artists who feature on remixed/sequenced Australian recordings continue to be eligible to register and be paid in respect of those recordings provided that such recordings have been notified to PPCA by such artist(s) as required under the rules of the scheme.

Registering for the scheme – Australian featured recording artists are required to register on an individual basis, even if they are members of a band (ie no "band" registrations are acceptable). Such artists can participate in the scheme by completing an application form that is available from PPCA and keeping that registration up to date by notifying PPCA of each sound recording (i.e one form only for an album or single or EP release as the case may be) released during their recording careers. PPCA may need to seek confirmation from the relevant copyright owner of an artist's status and entitlement to receive a direct distribution. To be included in the distribution for a particular Financial Year, we must receive your registration (or any updated information) before the applicable distribution cut-off date for that Financial Year (see above).

Distributions – Where an Australian artist has registered with PPCA to receive a direct distribution in relation to a particular track or video, we will pay the amount of any distribution that relates to that track or video as follows:

- 50% to the featured artist or artists.
- 50% to the owner of copyright in the sound recording or music video (usually the relevant record company).

Where an Australian artist has not registered with PPCA, the amount of any distribution that relates to the Australian sound recording(s) or video(s) on which they performed will be paid to the controlling copyright owner, for distribution to the artist under their recording agreement with that company.

Where there is more than one featured artist on a recording (eg members of a band), PPCA will make payments in equal shares unless we are advised otherwise by all members of the act or band. Where one artist is featured,

with various musicians or artists having only supporting roles, PPCA will treat the featured artist as the only person entitled to receive a direct distribution. The featured artist will then be responsible for making payment to the supporting musicians or artists in accordance with any contractual arrangements they have in place.

Direct distribution errors – If PPCA makes an error on the basis of the information provided to us prior to the applicable distribution cut-off date, which results in an artist not receiving some or all of a direct distribution that should have been paid to them (for example, if PPCA does not correctly process an artist's registration under the scheme), then we will endeavour to recover the amount in question from the record company or other relevant copyright owner that received it incorrectly. When we receive that amount, we will pay it to the affected artist.

If you are an artist who believes PPCA has made an error of this kind, you must contact us by no later than 31 March in the year immediately following the December distribution (ie. within about 90 days after you receive your payment). Please note, however, that we will not generally seek to recover an amount from the record company unless it is $20 or more.

Disputes – Where there is any dispute between artists (eg. between members of a band) as to their respective direct distribution entitlements in relation to an Australian recording, and that dispute is not resolved by the applicable distribution cut-off date, the amounts that would have been payable to the featured artists in respect of that recording will be paid directly to the copyright owner and PPCA will have no further liability to the featured recording artists in respect of those payments. It is the copyright owner's responsibility in such situations to deal with the payments in accordance with the terms of the relevant recording agreements or other contractual arrangements.

Statements – PPCA sends out a statement with each payment to an artist (provided that such amount is not less than the Minimum Artist Payment), which provides the following information grouped by (i) audio tracks and (ii) music videos:

- Tracks or videos grouped by performer name;
- Against each track or video:
  - Total earnings allocated to the track or video;
  - The controlling copyright owner;
  - The total amount available to performers under the Direct Artist Distribution Scheme; and
  - The percentage and amount payable to the registered artist; and
- Earnings sub-totalled by performer name (in the case of artists who may have recorded with more than one act).

Minimum Artist payments – The current minimum payment threshold is A$5.00 (five Australian dollars). Earnings for those artists whose annual total does not reach this threshold will be paid to the controlling copyright owner for acounting and processing in accordance with the individual artist agreement.

Further information – PPCA has produced an information pack that provides additional information about the scheme and who is entitled to participate, and includes an application form for artist registration. To obtain a copy, please contact us by one of the methods set out below.

Allocation and Distribution Issues not Covered by this Policy

Occasionally, an issue will arise in relation to the allocation and distribution of licence fee revenue that is not covered by this Policy. In such cases, the PPCA Board will determine by resolution how to handle the issue, taking into account appropriate professional advice. Any such resolution will be treated by PPCA as part of this

Policy for the purpose of allocating and distributing licence fee revenue. If the issue is likely to have an ongoing effect on PPCA's activities (for example, where it has arisen as a result of a legislative change), this Policy may be amended to incorporate the approach determined by the PPCA Board (see below, **Changes to this Policy**).

Holding Accounts

Sometimes PPCA is unable to make payments to copyright owners or artists that are entitled to receive them. In these circumstances, we hold the amount of the payments against a Holding Account while we determine how to make the payment.

There are two specific situations in which we will hold a payment:

- Where we are unable to locate the copyright owner or registered artist entitled to receive the payment.
- Where there is a dispute between copyright owners about which one is legally entitled to receive the payment.

We will generally hold payments for a maximum of four years, although this may be extended at the discretion of the Board of PPCA. At the end of that period, if we are still unable to make the payment to the person entitled to receive it, we will deal with the money as follows:

- In the case of a payment to a copyright owner, we will roll over the amount of the payment into the next year's Distributable Amount; or
- In the case of a payment to a registered artist, we will pay the amount to the copyright owner that controls the relevant recording.

During the four year holding period, we will pay out amounts as soon as we are able to do so. If a copyright owner or artist can establish that they are entitled to receive the amount, we will pay it to them. In the case of an amount in dispute, we will require some evidence of the satisfactory resolution of the dispute in favour of the copyright owner claiming the amount. If the dispute has been referred to mediation by PPCA (see below, **Complaints and Dispute Resolution**), we will make the payment as soon as we receive confirmation of the resolution of the dispute.

Obligations of Copyright Owners

Under the PPCA Input Agreement, each copyright owner has an ongoing obligation to provide a range of information to PPCA in relation to each of the sound recordings it produces or acquires, including the following:

- Product title and details of each track.
- Name of the artist.
- Country of citizenship, residence and/or incorporation of the record company/label that paid for the recording, and of each artist, performer and session musician who appears on the recording.
- Country in which the recording was made.
- Label under which the recording is released.
- Year in which the recording was originally released.
- Catalogue number of the recording.

Similarly, in relation to music videos, the copyright owners must provide the following details to PPCA:

- Title of the music video.

- Name of the artist.
- Country of citizenship, residence and/or incorporation of the maker of the music video.
- Country in which the music video is made.
- Label under which the music video is released.
- Catalogue number of the music video.

While we encourage you to provide us with this information and any updates as soon as you can, you should remember that we are unable to guarantee that information provided after the applicable distribution cut-off date for a Financial Year (see above) will be taken into account in the distribution for that Financial Year.

Copyright owners must also ensure that they keep PPCA informed of any changes to the record labels they own or control, including any labels that are discontinued and any new labels that are introduced.

PPCA also requires copyright owners to also advise us promptly of:

- any errors or overpayments of which they become aware from their annual statements;
- any changes to their address(es), contact details and key personnel; and
- any changes to their tax status (for example, if they obtain an ABN or become registered for GST purposes, or if they become a non-resident for income tax purposes).

Obligations of Registered Artists

PPCA has similar expectations of, and requires similar information from, registered artists. Artists should therefore advise us promptly of:

- any errors or overpayments of which they become aware from their annual statements;
- any changes to their address(es), contact details and key personnel;
- any changes to their tax status (for example, if they obtain an ABN or become registered for GST purposes, or if they become a non-resident for income tax purposes); and
- any new registrations under the Direct Artist Distribution Scheme (eg. new repertoire recorded).

PPCA's Obligations

Confidentiality – All of our staff are subject to a duty of confidentiality in respect of the information they acquire and use in the course of their duties for PPCA. This means they generally cannot disclose details about the allocation and distribution process, especially the individual dollar amounts or percentages of airplay logs attributable to particular artists (or particular members within a band), tracks or copyright owners.

PPCA staff will not reveal to members of the public the confidential contact details and other information we hold about registered artists, although we will on request give out contact details for the artists' managers.

Access to Information – The statements we send out with distribution payments are designed to help copyright owners and registered artists understand how their payment is calculated, and what recordings it relates to. However, subject to the duty of confidentiality described above, and to Federal privacy legislation that regulates the use and disclosure of personal information, we may be able to provide some additional information to copyright owners and artists about their own entitlements.

If you wish to receive any additional information about your entitlements, please contact us by one of the methods set out at the end of this Policy (see below, **How to Contact PPCA**). To ensure that we can examine and respond to your request quickly, we ask that you:

- provide appropriate identification so we can verify that you are a copyright owner or registered artist;
- tell us your artist registration number or other PPCA identification number;
- provide contact details so we can discuss your request with you; and
- tell us in as much detail as possible what information you wish to receive. We will try to accommodate your wishes in this regard, however as noted above for reasons of confidentiality and privacy, we may not be able to provide all the information you request.

Complaints and Dispute Resolution

PPCA actively encourages feedback on our performance across all areas of our business, and we respect the right of copyright owners and registered artists to make a complaint if they believe we have made a mistake in calculating their payments, or if they are unhappy with our service. PPCA publishes a guide to its *Complaints Handling and Dispute Resolution Policy*, which explains how you can make a complaint to PPCA and how we will attempt to resolve issues that concern you. You can obtain a copy of the Complaints Policy by contacting us on one of the methods set out below, or by visiting our website at http://www.ppca.com.au.

We aim to deal with all complaints to your satisfaction, but we recognise that we won't be able to resolve all issues in this way, and that some issues simply won't be appropriate to be handled as complaints at all. For this reason, PPCA can refer disputes involving copyright owners to mediation. The process is explained further in the Complaints Policy, and more information is available on request.

As noted above, if any money is in dispute, we will place it in our Holding Account until the dispute is resolved and the money can be paid to the appropriate person or copyright owner.

How to Contact PPCA

If you want further information about any aspect of this Distribution Policy, or if you have a question about your entitlement to receive a payment, you can contact us by one of the following methods:

- **By telephone** (during business hours) – 02 8569 1100
- **By fax** – 02 8569 1183
- **By email** – ppca.mail@ppca.com.au
- **By post**

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Changes to this Policy

From time to time, PPCA may need to amend this Policy to reflect changes to its operations or to take account of legal changes (eg. amendments of the Copyright Act, or a decision of a court or the Copyright Tribunal). This Policy will only be amended by a formal resolution of the PPCA Board of Directors, and we will ensure that a copy of the revised Policy is made available on our website as soon as possible after any changes.

This Policy was last updated on 1 July 2011.