

# **PHILIPPINES RECORDED MUSIC RIGHTS INCORPORATED (PRM)**

## **DISTRIBUTION POLICY**

*(as at 17 November 2020)*

This document sets out the policies applicable to the distribution of monies collected by PRM in respect of the licensing of the rights controlled by PRM in the Philippines. These policies will be updated on occasion as technology and good practices develop over time.

When applying and implementing these policies, consideration should be given to the relevant provisions of PRM's Code of Conduct.

## **CONTENTS**

	<b>Page No.</b>
1. Aims	2
2. Allocation of Revenues	2
2.1 General Principles	2
2.2 Radio and TV Broadcasting	3
2.3 Cable Retransmission	4
2.4 Public Performance	4
2.5 Reproduction	5
2.6 Webcasting	6
2.7 Other Revenues	6
2.8 Acceptable Practices when No Other Alternative is Available	6
3. Fair and Equitable Application of Distribution Rules	6
4. Distribution Schedule and Practices	7
5. Funds for Distribution	7
6. Operating Costs and Fees	7
7. Rights Conflicts	8
8. Unmatched Usage	8
9. Revenues for Unclaimed Repertoire	8
10. General Reserves	8
11. Approval and Publication	9
12. Qualification	9
13. Distribution to Relevant Right Holder	9
14. Division of Net Distributable Revenue between Producers and Performers	9
15. Allocation of Revenues between Producers	10
16. Allocation of Revenues between Performers	10
17. Reports from Users	12
18. Repertoire Registration	12
19. Data Format and Fields	13
20. Rights Data	13
21. Rights Conflicts	13
22. Unmatched and Unclaimed Usage	14
23. Process / Not Allocated	15
Annex 1 – Distribution File Template	

## **1. AIMS**

1.1 The aims of PRM's Distribution Policies are to ensure that:

- a) the licence fees collected by PRM are distributed and paid to Producers and Performers represented by PRM, fairly, efficiently, accurately, promptly and in a cost-effective manner;
- b) the licence fees are allocated to Producers and Performers represented by PRM, fairly in accordance with the usage of their Sound Recordings; and
- c) PRM's distributions are in accordance with PRM's Articles of Association, By-Laws and contractual duties to its Producer members, Performer members and its foreign affiliates including other Music Licensing Companies (MLCs).

1.2. For the avoidance of doubt:

- a) Producer refers to the person who, or the legal entity which, takes the initiative, has the responsibility for the first fixation of sounds of a performance or other sounds, or a representation of sounds and/or pays for the recording e.g. a record company;
- b) Performer refers to a singer or musician who sings, plays, or otherwise performs a musical work, and whose performance has been fixed in a sound recording and/or music video eligible for protection, and is who further classified as either a Featured or Non-Featured Performer pursuant to Clause 16.1; and
- c) for the purposes of this Distribution Policy, references to Sound Recordings also cover performers' protected performances fixed in sound recordings.

## **2. ALLOCATION OF REVENUES**

### **2.1 General Principles**

All PRM members understand and agree that after deduction of the operating costs, statutory deductions and other deductions authorised by the right holders from the collected gross revenues, 50 (fifty) percent of PRM's net revenue from collections will be allocated to the Performers and 50 (fifty) percent to the Producers except for reproduction licences in respect of which Performers have no right to equitable remuneration, whereby all such revenue shall be allocated to the relevant Producers.

When allocating revenues to right holders, PRM revenues shall be distributed:

- a) to all right holders at sound recording/track level; and
- b) based on actual use in respect of the services to which the revenue relates,

insofar as it is economically reasonable and unless otherwise stated in this Distribution Policy document.

PRM shall allocate and distribute revenues only to eligible and protected recordings. The criteria for eligibility for collections and distributions shall be explained and made available on PRM's website.

The principles stipulated in PRM Distribution Policy shall apply to both right holder groups unless specified otherwise.

## **2.2 Radio and TV Broadcasting**

Radio and television broadcast and original cable-casters licence revenues shall be distributed based on actual use and allocated for each station or channel separately, taking into account:

- a) the distributable amount for the station or channel;
- b) the cumulative reported duration of all recordings broadcast on that station or channel;
- c) the cumulative reported duration of usage of each individual recording; revenues should be allocated per recording; and
- d) the duration of recordings and partial use of recordings in seconds.

Revenues per individual station shall be allocated per recording in proportion of the cumulative duration of the broadcasting of the recording compared to the cumulative duration of the recordings broadcasted.

Allocation shall be based on duration of recordings and partial use of recordings in seconds. System implementation may permit for different weighting which shall be based on objectively justifiable criteria such as audience size at day and night.

Where it is not economically feasible to allocate all revenue separately per channel, revenues from channels with similar profiles may be pooled and distributed based on reports from a statistically representative sample of channels.

An amalgamation of revenue and usage sources into pools for allocation purposes may only occur where the stations or channels in the pool have verifiably similar licence value and/or similar usage and shall take account of relative usage and audience.

For small and medium stations or channels that do not supply playlists or for which the cost of processing the playlist is not reasonable compared to the revenue collected from that station, a statistically representative sample of stations, for which playlists of good quality are available, may be used to determine the allocation of revenues for a wider group of similar stations.

The principles and criteria for the selection of reports from stations for a statistically representative sample must be transparent and made available to right holders. The selection of the reports must be based on objective criteria and analysis and reflect actual use of recordings as closely as possible. If required, different weighting based on objectively justifiable criteria may be applied. The appropriateness of the sample stations for the other stations they represent shall be regularly reviewed and re-assessed. Only high-quality reports reflecting actual use may be selected for the sample. Revenue shall be allocated according to the total duration of the recordings broadcast by all the stations in the sample.

Recordings which do not qualify for remuneration, for instance recordings that do not meet the criterion of “published for commercial purposes” if such a criterion is applied, or recordings for which the right holder has already been remunerated directly by the user, must be excluded from the usage reports used for distribution.

Reproduction for broadcasting is to be allocated based on reproduction rules (see Reproduction Rules at Clause 2.6).

## 2.3 Cable Retransmission

Revenue from cable retransmission shall be distributed as closely to the actual use as possible and divided for distribution according to:

- a) the proportion of domestic/international channels/programs retransmitted by the cable operator; and
- b) the proportion of households using the packages.

**Domestic:** revenues paid by the cable operator for the retransmission of the eligible sound recordings in domestic radio or TV broadcasts shall be distributed on the basis of the usage reports provided by domestic terrestrial broadcasters or by ACR companies or other providers.

**International:** revenues by the cable operator for the retransmission of the sound recordings in international radio or TV broadcasts shall be distributed on the basis of actual usage reports from:

- a) foreign MLCs licensing the broadcaster in the territory from which the retransmitted broadcast is originating or being uplinked/transmitted; or
- b) ACR companies or other providers.

The reports of international channels/programs shall be prioritised according to the revenue generated (e.g. based on the number of subscribers to the channel) by the channels/programs. PRM shall request usage reports from foreign MLCs and/or other service providers if it is economically feasible, i.e. the distributable value of the channel/program is sufficiently high.

## 2.4 Public Performance

Revenues collected from public performance shall be distributed based on actual use and usage reports as far as they are available.

Considering that not all users are able to provide usage reports or usage reports are not available at all, the collected revenues shall be allocated as closely as possible to the actual use and taking into account the following or a mix of potential sources for obtaining data on the actual use and the relevant proxies (in the order of preference), considering the value of the use of sound recordings in the different sectors:

- a) reports from users (using statistically representative samples where relevant);
- b) reports from ACR companies;
- c) reports from background music providers (on what has been copied and ideally playout data); and
- d) radio reports.

Where the public performance of sound recordings in TV broadcasts is licensed, the share of collected revenues distributed on the basis of TV usage reports should be proportionate to and reflect the actual use of TV as a source of background music.

Regular user surveys to obtain information on the extent of use of TV programs/channels as the source of background music by public performance users should be carried out and

revenues collected for the use of TV in public performance should be allocated on the basis of relevant usage reports. Only high-quality reports reflecting actual use may be used for allocation of revenues.

Recordings which do not qualify for remuneration, for instance, recordings that do not meet the criterion of "phonograms published for commercial purposes" if such criterion is applied, or recordings for which the right holder has already been remunerated directly by the user, must be excluded from the usage reports used for distribution.

Reproduction revenue for public performance shall be allocated according to reproduction rules (see Clause 2.5).

## **2.5 Reproduction**

### **2.5.1 Reproduction for broadcast**

#### ***Reproduction – radio broadcasting***

Revenues shall be allocated according to the playlists supplied by radio broadcasters (or where applicable, by ACR companies or other service providers) for each station or channel separately.

The revenues shall be allocated taking into account the cumulative reported frequency and duration of usage of each individual recording.

#### ***Reproduction – TV broadcasting***

Revenues for synchronisation rights and reproduction for secondary exploitation markets (reproduction of sound recordings incorporated in an audio-visual production for the purpose of the sale of programs to other broadcasters (local and international), or sales of copies of the audio-visual productions to consumers as DVDs, DTO etc.) per recording should be allocated on the basis of the report from the respective user.

Revenues collected for broadcast mechanicals should be allocated according to the usage reports from TV broadcasters, ACR companies or other service providers. Only high-quality reports reflecting actual use may be selected for the panel.

Library, commissioned or production music recordings licensed directly to TV broadcasters shall be excluded from the report used for allocation of the respective revenues.

### **2.5.2 Reproduction for public performance**

Reproduction revenues shall be allocated according to usage reports from background music providers, public performance users which undertake Reproduction, and/or ACR companies, and taking into account what has been copied and whether the copies have been retained, as well as the play out reports (where that can be provided).

With respect to the Reproduction revenues for which the reports on actual usage are not available (e.g. general reproduction rights' licence for government entities covering reproduction carried out by educational institutions, and similar), regular surveys should be

carried out and revenues should be allocated according to proxies, which must reflect the actual use as closely as possible.

## **2.6 Webcasting**

Webcasting revenues should be allocated similarly to the process for radio broadcast, i.e. according to the actual usage using playlists supplied by the webcaster or podcaster. Due to data volumes and the smaller reach or value of some streams there may be a need to manage the allocation of small revenues that can't be economically processed using full usage data for all webcast channels. If possible, data should be carried between reporting periods so that amounts may accumulate to a level where they can be economically processed.

If usage reports are not available, or allocation based on usage reports may not be economically feasible, then usage reports of broadcasters or reports by [a sample of] similar webcasters may be used as a proxy. If this is done, it should be on the basis of establishing, at the time of licensing, a suitable similar radio proxy, and the suitability of the proxy should be re-assessed frequently. A robust method of establishing proxy sources shall be established and maintained.

## **2.7 Other Revenues**

Revenues shall be allocated based on usage reports.

If reports on actual usage are not available, allocations should be made according to best available proxies, taking into account their appropriateness as a reference and their quality of reporting.

Interest income on collected amounts held on account, and unless used to off- set operating costs, shall be distributed to the right holders on pro-rata basis.

## **2.8 Acceptable Practices When no Other Alternative is Available**

For all kind of revenues, if despite good faith efforts, parts of user reports cannot be processed (for example poor quality playlists that nevertheless have a significant proportion of the recordings properly identified), the following practices can be used in the following order of preference, on the condition that the chosen approach reflect the actual use as close as possible:

- a) allocation using the standard practice for the portion of the users' reports that can be processed;
- b) allocation using reports supplied by other users of the same sector, when the recordings used are supposed to be similar to those of the other users;
- c) allocation using reports supplied by users of a different sector, but linked to the sector concerned.

## **3. FAIR AND EQUITABLE APPLICATION OF DISTRIBUTION RULES**

The distribution rules and their implementation shall be overseen by a distribution committee, consisting of a fair and balanced representation of right holders whose rights are managed by PRM, and competent to bring expertise and objectivity to the task.

A non-discriminatory application of distribution rules is essential. There shall be fair and

equitable treatment regarding distribution for all represented right holders either directly or through a bilateral agreement with another MLC.

#### **4. DISTRIBUTION SCHEDULE AND PRACTICES**

Collected revenues shall be distributed to all right holders no later than six months after the end of financial year in which such revenue is collected.

The distribution schedule must be developed, approved and published well in advance of distributions taking place. The following year's distribution schedule shall be published before the end of each current financial year.

The distribution schedule shall include distribution to local members and distribution under unilateral or bilateral agreements.

PRM shall provide to the right holders it represents and to other MLCs with which PRM has unilateral or bilateral agreements, royalty statements itemised per sound recording/track and as per *Annex 1 Distribution File Template*.

#### **5. FUNDS FOR DISTRIBUTION**

Distribution funds shall be segregated for each revenue stream. The method for preparing each fund for distribution shall be set out within the distribution rules.

The method shall clearly establish processes for:

- a) deducting operating costs/fees (see Operating Costs and Fees);
- b) deductions for general reserves (see General Reserves);
- c) deductions of applicable taxes;
- d) any other authorised deductions;
- e) any additional sources of revenue, such as interest, income arising from investments of rights revenue etc; and
- f) any reserves for redistribution (unclaimed or General Reserves, see below).

Information about the funds shall be maintained in a manner that enables these details to be reported to right holders as a part of the distribution file (see Distribution Schedule and Practices).

#### **6. OPERATING COSTS AND FEES**

Fees shall be reasonable in relation to the services provided, shall not exceed the appropriate, actual and documented costs, and shall be based on objective criteria which should reflect the fact that different costs may relate to managing different rights and usages.

The fees applied shall reflect only true and documented operating costs. Variable costs deductions from different revenue streams must be fair and based on the costs actually attributable to the relevant revenue streams.

Such operating costs shall, in any event, not exceed 25% of total annual revenue without the approval of the Board of Trustees and PRM's Members.

PRM shall treat all right holders equally and apply the same distribution fees.

## **7. RIGHTS CONFLICTS**

Fair and transparent procedures shall be implemented for resolving claims conflicts, including robust processes and reasonable deadlines for the processing of double claims by right holders. If the ownership is contested with credible claim and proof of ownership, PRM shall not pay out monies for the recordings in question until the claim has been resolved.

PRM shall implement this clause according to the provisions stipulated under Clauses 17 to 23 (within the bounds of commercial feasibility).

## **8. UNMATCHED USAGE**

PRM must take all reasonable steps to identify recordings and right holders and retain adequate reserves to meet claims from unrepresented right holders within the prescription periods.

PRM shall carry out the work with unmatched and unclaimed prioritised of the basis of value. This clause shall be implemented according to the provisions stipulated under Clauses 17 to 23 (within the bounds of commercial feasibility).

## **9. REVENUES FOR UNCLAIMED REPERTOIRE**

A three-year prescription period shall be applied (unless national laws provide otherwise).

PRM shall hold throughout the prescription period relevant monies against the recordings used, if the payee:

- a) cannot be located despite all reasonable endeavours, or
- b) has not provided the details required to enable the payment.

At the expiry of the prescription period, revenue for recordings, owners of which have not been identified, shall, unless prohibited by applicable legislation, be distributed to right holders, taking into account in particular allocations made previously to right holders in the relevant financial year, and with the objective of allocating revenue to the right holders most likely to have a claim to such revenue.

PRM shall freeze the relevant revenue for a time beyond the prescription period if the unpaid revenue is due to claims conflicts and parties to the dispute can show evidence of arbitration/legal proceedings ongoing.

Revenues for unclaimed repertoire shall be held separately from the general reserve.

## **10. GENERAL RESERVES**

General reserves shall only be maintained at a level reasonably required to deal with third party claims and to account for legal risks, and must not apply to any other types of deductions. At the expiry of the prescription period, revenue held in reserve should be distributed to right holders in proportion to allocations made to those right holders in the relevant financial year.



Deductions or reserves for purposes other than third party claims and legal risks shall not occur unless national law provides for it and right holders have given their consent. No amounts shall be deducted for social and/or cultural purposes from amounts due to a right holder pursuant to a representation agreement unless express consent has been given.

PRM shall ensure that during the respective prescription period, revenues held in reserve may be allocated to right holders making valid claims, e.g. where usage was not properly reported or missing from the usage report.

## **11. APPROVAL AND PUBLICATION**

Upon approval by PRM's Board of Trustees, PRM shall publish its Distribution Policy and written Distribution Rules.

## **12. QUALIFICATION**

PRM shall distribute the revenues only in respect of recordings that were eligible and protected at the time of their exploitation, unless this would be contrary to Philippine legal requirements.

## **13. DISTRIBUTION TO RELEVANT RIGHT HOLDER**

Distribution of revenue allocated to a recording should be made to the company/person that owned the rights at the time in which the recording was exploited or as that company/person instructs. Allocations of revenue may be offset against previous overpayments made to the party due the allocation or to associated parties.

## **14. DIVISION OF NET DISTRIBUTABLE REVENUE BETWEEN PRODUCERS AND PERFORMERS**

14.1 All revenue allocated to each sound recording other than revenue from reproduction licences shall be shared on a 50/50 basis between:

- a) the relevant Producer (or Producers); and
- b) the Performers on that sound recording,

subject to adjustments in respect of any differing costs and deductions allocated to Producers and to Performers pursuant to Clause 6.

14.2 Where revenue is attributable to reproduction licences in respect of which Performers have no right to equitable remuneration, Clause 14.1 shall not apply and all such revenue shall be allocated to the relevant Producer (or Companies).

14.3 Where a single payment is made to PRM in respect of the exercise of two or more of sound recording rights and Performers do not have a right to equitable remuneration in respect of all of those rights, PRM shall allocate that payment between the exercise of those different rights in such proportions as it shall determine to be reasonable in all the circumstances. In such circumstances Clause 14.1 shall not apply in respect of revenue allocated to the exploitation of that part of the sound recording rights in which Performers

do not have a right of equitable remuneration.

*Example: licence fees received in respect of both the Reproduction (dubbing/copying) and Broadcasting of sound recordings shall be divided so that the Reproduction revenues are allocated to Producers only and the broadcasting revenues can be allocated to Producers and Performers.*

## **15. ALLOCATION OF REVENUES BETWEEN PRODUCERS**

- 15.1 All policies related to allocation of revenues between the Producers shall be formulated and decided by a PRM Producers distribution sub-committee.
- 15.2 Producer allocation for a particular sound recording and a particular exploitation period shall be allocated to the Producer (or those Producers) who is (or are) registered as the right holder(s) on PRM's sound recording database in respect of that sound recording and that exploitation period.
- 15.3 Clause 15.2 shall not apply to the extent that the relevant Producer informs PRM in writing otherwise.
- 15.4 For the avoidance of doubt, where the relevant right holder in respect of a particular sound recording is a member of a MLC, that right holder shall be allocated monies for that sound recording in accordance with Clause 15.2 (whether or not that right holder is itself a Producer).
- 15.5 Where there is a transfer of sound recording ownership by one Producer to another Producer during an exploitation period, those Producers must agree between themselves as to:
- a) Which Producer is to be paid by PRM for exploitations of the sound recording(s) in the period from the start of the exploitation period to the date of the transfer; and
  - b) Which Producer is to be paid by PRM for exploitations of the sound recording(s) in any previous exploitation periods in respect of which the transferring Producer controlled that repertoire.
- 15.6 In adjusting allocations to take account of a transfer of repertoire (whether such adjustment is in accordance with instructions from the relevant Producers or on the basis of PRM's discretion), PRM shall be entitled to treat the transfer as taking place on a date other than the actual date of the transfer where PRM determines this to be reasonable in all the circumstances.

*Example: where the transfer of repertoire takes place on 27 November, PRM may decide to treat the transfer as taking place on 1 December on the basis that a substantial proportion of usage reporting to PRM takes place on a monthly basis.*

## **16. ALLOCATION OF REVENUES BETWEEN PERFORMERS**

- 16.1 All policies related to allocation of revenues between the Performers shall be formulated and decided by a PRM Performers distribution sub-committee.

16.2 Performer allocation for a particular sound recording shall be allocated to the Performer(s) who is (or are) registered as the right holder(s) on PRM's sound recording database in respect of that sound recording.

### 16.3 Performer Classification

- a) PRM shall classify each Performer included on a sound recording line-up as either:
- i) a Featured Performer who is either:
    - a Contracted Featured Performer i.e. a Performer who is bound by an agreement as a performer with the relevant Producer to provide a performance on a Sound Recording (save that agreements for session work or producer or remixer agreements are excluded) and who is credited as the lead artist or conductor on that Sound Recording, or
    - an Other Featured Performer i.e. a Performer who is not a Contracted Featured Performer but who falls into one of the following categories:
      - a guest lead vocalist (such as a lead vocalist not exclusively contracted to the commissioning Producer);
      - a performer (who contributes an audible performance or is a conductor) not exclusively contracted to the commissioning Producer but whose personal or professional name appears with or is linked to the name of the Contracted Featured Performer(s) on the Sound Recording; or
      - a performer who provides an audible performance (or is a conductor) and therefore is entitled under the terms of a contract with the commissioning Producer or the Contracted Featured Performer to receive royalties from sales of the sound recording; or
  - ii) a Non-Featured Performer i.e. a Performer who is not a Featured Performer (for example, a session musician).

In the absence of satisfactory information as to the correct classification of a Performer on a sound recording, that Performer shall be classified on a provisional basis as a Non-Featured Performer.

16.4 In the absence of a Performer share agreement specifically varying proportions of Performer allocations by sound recording, the Performer sound recording allocations shall be allocated between the Featured Performer share and the Non-Featured Performer share as follows:

- a) Sixty-five per cent (65%) shall be allocated to the Featured Performer share and thirty-five per cent (35%) shall be allocated to the Non-Featured Performer share, save where Clause 16.4(b) applies; or
- b) Where PRM has been notified in writing that there is a single Featured Performer on a sound recording and such Performer contributes as a conductor together with an ensemble of not less than forty-one (41) Performers, thirty-two-and-a-half per cent (32.5%) shall be allocated to the Featured Performer Share and sixty-seven-and-a-half percent (67.5%) shall be allocated to the Non-Featured Performer Share.

## **17. REPORTS FROM USERS**

- 17.1 Contracts with users should stipulate that they are obliged to provide a mandatory minimum data set regarding their use and the recordings used. Small scale public performance users may be exempt from reporting obligation, but they should at least be obliged to report the source of background music used.
- 17.2 When engaging with an Automated Content Recognition (ACR) service provider, PRM should ascertain that: <sup>[17]</sup><sub>[SEP]</sub>
- a) the service provider has the repertoire to cover the usage monitored or has the capacity to obtain it within a reasonable period of time; and
  - b) the use of service is cost effective. <sup>[17]</sup><sub>[SEP]</sub>

Whenever possible, the costs of the ACR service should be borne by users. If not possible, costs sharing with the authors' Collective Management Organisation (CMO) namely FILSCAP should be examined.

## **18. REPERTOIRE REGISTRATION**

### **18.1 PRM should:**

- a) establish a data quality policy clearly setting out required data; and
- b) establish and communicate to the right holders the registration processes such that right holders are facilitated in registering their repertoire and claims.

### **18.2 Registration processes must not impede the distribution of revenues to right holders based on discriminatory and restrictive requirements for repertoire registration.**

- a) The rights owner shall register the data for its recordings with PRM in accordance with the schedule published by PRM. (It is noted that failure to register the repertoire or late registration if there have not been any impediments due to a discriminatory or restrictive requirement may entail delays in, or no payment.)
- b) Where an appropriate industry portal or database is established, right holders shall provide for PRM to retrieve repertoire data via that mechanism, and may direct PRM to this source.

### **18.3 Where there is usage, but the repertoire has not been provided to PRM, PRM shall inform the rights owners on line about the missing repertoire.**

### **18.4 PRM shall obtain repertoire data from right holder directly or from a source that the right holder has declared is authoritative for its repertoire. PRM shall work with the Producers in the local market and emphasise the importance of registering repertoire.**

### **18.5 PRM may not use data from product packaging or derived from airplay reports: such data is not authoritative and does not generally identify the rights owner for the relevant usages. If PRM holds such data as a temporary measure, it must not be used as equivalent to repertoire data provided by the right holders.**

### **18.6 PRM shall use identifiers for Producers to obtain clarity, especially internationally, about**

the relevant rights holders and payees, linked to repertoire.

18.7 PRM shall use the International Standard Recording Code (ISRC) as the identifier for recordings and to the maximum possible extent ensure that ISRC is included with all repertoire registrations.

18.8 PRM shall check the supplied repertoire data prior to ingesting it in its database in order to detect errors and to identify and, if possible, resolve duplicates, rights conflicts and double claims.

## **19. DATA FORMAT AND FIELDS**

19.1 Common technical standards shall be implemented as a priority wherever possible, in areas of data transfer, the standardization of fields and their meanings, the establishment of agreed mappings between different terms where necessary, and in the use of identifiers.

19.2 PRM should as far as possible implement the Digital Data Exchange (DDEX) Music Licensing Suite (MLC) Message Suite both for data exchange between MLCs and for supply of repertoire data to the MLCs.

## **20. RIGHTS DATA**

20.1 PRM shall maintain producer and performer rights data at the recording level, by time-period, use-type and territory.

20.2 PRM shall implement reasonable procedures to ensure that repertoire declarations and rights ownership claims are legitimate and credible (*the preferred instrument to ensure legitimacy of declared repertoire and rights claims is a legal agreement executed between the MLC and the party providing data/claims. Other mechanisms such as provision of artist contracts, scans of physical product packaging, Universal Product Code (UPC) numbers for digital files and the like are often inaccurate in terms of proof value and can be burdensome for both the right holder and the MLC. PRM should maintain reasonable provisions for the eventuality that some parties do breach agreements to provide accurate repertoire and claims data*).

20.3 The data from ACR service providers and other providers of usage reporting shall not be taken as indicative of rights ownership unless specifically verified by right holders and only in respect of specifically identified recording repertoire (*The data provided to ACR service providers is typically obtained from a variety of sources which may not be authoritative as regards the relevant, current rights ownership data for collective management purposes in any given territory, time period or particular use type. In cases where such rights data is expressly supplied and maintained by authoritative sources, these sources should inform the PRM that this is the case*).

## **21. RIGHTS CONFLICTS**

21.1 PRM shall evaluate the rights data of recordings to determine if there are rights conflicts taking into account the time period, use-type and territory. PRM shall work to achieve early detection/resolution of claims conflicts wherever possible.

- 21.2 If there is a rights' conflict, the two or more right holders will have to solve the conflict in accordance with PRM's disputes policy before PRM will register the rights holder to the sound recording.
- 21.3 PRM shall, when claims are resolved, update its records with the authoritative data and not retain or promulgate incorrect recording claims data. The same obligation is applicable to the parties to the dispute and those who may still hold copies of inaccurate data.
- 21.4 PRM shall employ a data quality policy to ensure high quality of registered data and shall ensure that recording version and corresponding ISRC data is provided to achieve clarity on different versions of recordings. Clarity on versions can reduce the occurrence of 'false' claims conflicts. In appropriate circumstances, PRM should split revenue between different versions of a recording.
- 21.5 For international mandates, at the time of data registration or otherwise, PRM should make absolutely clear to right holders or agents that mandates should not be given where rights are otherwise properly claimed in the relevant territories, for parts or all of their repertoire.
- 21.6 PRM shall make claims internationally only for the repertoire for which it holds an explicit right holder's mandate.
- 21.7 If necessary, parties in disputes concerning rights ownership may use alternative dispute resolution (ADR) and mediation/arbitration to resolve claims conflicts. PRM should point the parties in dispute to the World Intellectual Property Organisation (WIPO) arbitration service if ADR is unavailable locally.
- 21.8 PRM shall apply, where appropriate, proof of ownership criteria to the data provided by aggregators and distribution companies regarding claims that they make with respect to the repertoire data of their clients.

## **22. UNMATCHED AND UNCLAIMED USAGE**

- 22.1 PRM shall minimize occurrences of unmatched/unclaimed repertoire by establishing a data quality policy clearly setting out required data and by utilizing good data matching technology that is effective in generating accurate matches/candidate matches and which accommodates spelling alternatives and errors.
- 22.2 PRM should operate an effective claiming process, including for the non-members for whose repertoire they collect, accessible on a non-discriminatory basis to all right holders, to establish claims when unmatched/unclaimed repertoire does arise.
- 22.3 If PRM has unmatched/unclaimed repertoire, it should:
- a) centralise and aggregate unclaimed usage/repertoire into a single place;
  - b) publish and make accessible to all right holders, members, other MLCs and agents claiming procedures and lists of unclaimed and unmatched repertoire; and
  - c) seek a competent, cost-effective partner/service provider to process and see if they can match unmatched/unclaimed repertoire.

## **23. PROCESSED / NOT ALLOCATED**

- 23.1 Allocation should always take place if the recordings are identifiable. PRM shall operate a claiming process and/or proactively seek the required data as provided under Unmatched and Unclaimed Usage.
- 23.2 PRM shall hold unallocated revenue against the usage and seek the authoritative information that would enable the revenue to be distributed.
- 23.3 PRM shall evaluate usage through the year and work proactively with right holders to secure repertoire and rights ownership data to minimise occurrence of unallocated revenue at the time of distribution or exclusion of non-reported/non-registered repertoire from the distribution.
- 23.4 Revenue that remains unallocated following a prescription period shall be distributed to right owners pro-rata on the basis of their allocations in the relevant period, subject to local legislation.
- 23.5 Poor quality usage reports or report data with low economic value may be excluded from the distribution only if absolutely necessary. This is only within reason, and is not preferred, and:
- a) must be based on economics;
  - b) may apply to small funds but not large funds; and
  - c) all efforts must be made to secure good quality data to minimise such exclusions (within the bounds of commercial feasibility).
- 23.6 As a guideline, processes could be considered ineffective if less than 80 percent of usage value is not initially able to be allocated to repertoire and right holders, although it is accepted that PRM being newly incorporated would not reach this standard yet.
- 23.7 The exclusion from the distribution process of data that could be economically processed is not acceptable.
- 23.8 Instances in which unallocated revenue is not returned to the relevant funds, e.g. due to local legislation (which may stipulate cultural funds, etc.) should be an exception.