

# COPYRIGHT LICENSING LIMITED DISTRIBUTION POLICY

## 1. INTRODUCTION

Copyright Licensing Ltd (CLL) receives revenue from domestic licensing schemes on behalf of publishers and authors worldwide. It also receives licensing revenue from overseas Reproduction Rights Organisations (RROs) on behalf of publishers and authors in New Zealand for copying of their works overseas.

This Distribution Policy reflects the rules for receipt and allocation of monies set in CLL's Constitution and has been set by CLL's Board of Directors to ensure that distribution of licensing revenue is:

- timely;
- tied to usage;
- fair and equitable;
- consistent and even handed:
  - between groups of rightsholders (e.g. publishers, authors, domestic and overseas rightsholders);
  - between licence pools (with consistent allocation of costs); and
  - from year to year.

## 2. LICENSING REVENUE

CLL represents publishers and authors whose works are copied under CLL licensing schemes and copyright clearance services operating in New Zealand. It has mandate agreements with New Zealand publishers and reciprocal agreements with Reproduction Rights Organisations overseas that provide the repertoire that can be copied under its licensing and clearance services.

CLL receives licensing revenue from RROs overseas on behalf of New Zealand publishers and authors for copying of their works overseas under similar licensing schemes and clearance services.

Revenue from CLL's blanket licensing schemes is held in different revenue pools (e.g. Universities, Schools, Business etc.) and sampling surveys are carried out in each sector to gather bibliographic data on the works being copied under licence for distribution purposes.

Revenue from CLL's Copyright Clearance Services is held separately and licensees provide CLL with records of all copying carried out under licence for invoicing purposes.

## 3. DISTRIBUTABLE FUNDS

### 3.1 Distributable Funds

At the end of each accounting period (calendar year), net revenue from CLL's blanket licensing schemes and Copyright Clearance services is transferred to appropriate distribution pools and set aside for distribution. Such funds are held in interest bearing Term Deposit accounts.

### 3.2 Net operating costs

Net operating costs are arrived at by offsetting interest and revenue from administrative charges against CLL's operating costs.

### 3.3 Deductions from Blanket Licensing Schemes

Each blanket licensing revenue pool is offset by a proportionate share of CLL's net operating costs and a contribution to the Cultural Fund. The balance is declared for distribution (Distributable Funds).

### 3.4 Administrative charges

CLL deducts a fixed percentage for costs incurred in the distribution of revenue from copyright clearance services and overseas RROs as follows:

- Copyright Clearance Services: 25%
- Overseas licensing revenue:
  - mandated publishers 7.5%
  - unmandated publishers 15%

The revenue received from these charges is offset against CLL's net operating costs which are allocated proportionately against the revenue from blanket licensing schemes.

### 3.5 Cultural Fund

Each year 2% of revenue from blanket licensing schemes is allocated to a separate account for cultural and/or social purposes conducive to the interests of publishers and authors in line with CLL's Constitution.

### 3.6 Interest

All money allocated for distribution is held in interest bearing Term Deposit accounts until it is distributed to the relevant rightsholders. Any interest earned on money held in trust is offset against operating costs incurred in the year the interest is earned.

### 3.7 Trust period

Distributable Funds for each accounting period are held upon trust for a period of at least five years from the end of the accounting period in which the monies were received, or such further period as the Board may determine.

## 4. ALLOCATION OF DISTRIBUTABLE FUNDS

### 4.1 Calculation of the amount allocated

CLL's distributions are based on the copying records provided by licensees and overseas RROs. Where the copying records are obtained from sampling surveys carried out in each licence sector, money is allocated to copying records on a per page basis by dividing the distribution pool by the total number of copy pages in the copying records collected from each sector to calculate the page rate and then multiplying the copy pages for each record by the page rate:

$$\frac{\text{Sector Distribution Pool \$}}{\text{Total \# copy pages}} = \text{Page rate} \quad \times \quad \text{copy pages per record}$$

The allocation of revenue from copyright clearance services is based on copying records provided by licensees.

### 4.2 Attribution

All money allocated for the copying of a particular work is attributed to the publisher (whether mandated or not) of the work who is required to share the funds with third parties (i.e. authors, artists etc.) based on the contractual arrangements between them. The publishers sign a Warranty that they control the reproduction right to the work. Local representatives of overseas publishers are nominated as recipients before overseas RROs. Where money is allocated to

New Zealand publishers who have not signed a mandate with CLL they are given the opportunity to do so when they are advised of the allocation.

Where rights have reverted to the author, the money allocated for the copying of a work will be attributed to the author. Such authors may provide CLL with a mandate relating to such works.

Monies allocated to overseas rightsholders are attributed to the RRO in their country where one exists. These funds are distributed to the RROs that have signed Reciprocal Agreements with CLL involving the transfer of licensing fees between them (A Agreement) but not to RROs that have signed a repertoire only agreement (B Agreement). RROs with B Agreements are notified of the monies allocated to them and these funds are held in trust for the trust period.

## **5. UNIDENTIFIABLE AND UNIDENTIFIED COPYING**

Often the copying records provided by licensees do not clearly identify the work copied. These records are divided into two broad categories – unidentifiable and unidentified.

### **5.1 Unidentifiable copying**

In this instance the information provided by the licensee on the record form identifies the work as copyright material but does not provide enough information about the work copied to enable the rightsholder to be identified and the money distributed. Although unidentifiable copying is recorded as copyright material copied for the purposes of assessing the volume of copyright material copied under a particular scheme, these records are excluded when distributable funds are allocated for distribution.

### **5.2 Unidentified copying**

In this instance, the information provided by the licensee on the record form is not sufficient to identify either the work or the rightsholder with complete certainty. Unidentified copying also includes instances where CLL can identify the work but cannot identify or locate the rightsholder. Money is allocated to these records and efforts are made to identify the work and the rightsholder so that the money can be distributed within the trust period.

If CLL is unsuccessful in identifying the work and/or the rightsholder the money may be transferred to an appropriate distribution pool at the end of the trust period for redistribution.

## **6. WORKS EXCLUDED FROM DISTRIBUTION**

The following works are excluded from CLL's distributions:

- Works that can be identified as public domain (out of copyright);
- Works of rightsholders who have elected to exclude their works from CLL's licence schemes;
- Works of rightsholders who have advised CLL that their works can be copied freely without payment of a licence fee. These are referred to as copyright-free. In this instance CLL asks the rightsholder to confirm that they either control 100% of the rights in the works to be excluded from the distribution or that they can exclude those works on behalf of other rightsholders;
- Unidentifiable copying.

All works produced by or on behalf of a Government Department or Minister of the Crown will be excluded from CLL's distributions unless the Government Department or Ministry has provided CLL with a mandate to include such works.

## **7. DISTRIBUTION OF DISTRIBUTABLE FUNDS**

Distributable Funds available for distribution from the previous accounting year are allocated for distribution in the last quarter of each year. Revenue from a number of different licensing

schemes including revenue received from the Copyright Clearance Service may be included in notifications provided to rightsholders.

Distribution of licensing fees received from some sectors may be carried forward and accrued until there are sufficient funds to distribute and sufficient data on which to base the distribution.

#### 7.1 Timing of Distribution

Monies allocated to rightsholders from the Distributable Fund must be distributed to rightsholders as soon as practicable after distributable funds have been allocated.

As the majority of NZ publishers have provided CLL with a mandate to include their works in CLL's licensing schemes, priority is to be given to processing distributions to mandated rightsholders and to overseas RROs. These two groups generally receive more than 90% of annual distributable revenue.

Notifications will be sent to NZ mandated rightsholders within three months of the annual distributable funds being allocated.

Notifications will be sent to unmandated NZ rightsholders who have been allocated \$1,000 or more within 6 months of the funds being allocated.

Notifications will be sent to unmandated NZ rightsholders who have been allocated between \$100 and \$1,000 within 12 months of the funds being allocated.

#### 7.2 Distributions to RROs

Funds allocated to overseas RROs which have an A agreement with CLL will be distributed within three months of the annual distributable funds being allocated where the amount is more than \$200.00.

Funds allocated to overseas RROs which have a B agreement with CLL will be held upon trust for 5 years before being transferred to appropriate distribution pools for redistribution (held for trust period in case an A Agreement is entered into and funds are transferred).

#### 7.3 Distribution to New Zealand rightsholders

New Zealand rightsholders are notified of the amounts they may be entitled to claim from Distributable Funds. The Notification (Notification of Copied Works: NOCW) is based on information provided by licensees and where available sets out details of the:

- Title of the works copied (including article and chapter names, page numbers, volume and edition if provided);
- Imprint (publisher);
- Name of the author(s) and/or editors;
- Number of copy pages;
- Page rate;
- Amount payable for each record;
- Distribution pool from which money allocated (or RRO, or Copyright Clearance Service).

In providing notifications of copied works CLL will give priority to mandated New Zealand rightsholders.

Payment to New Zealand rightsholders is made on receipt of a GST invoice and a signed Distribution Warranty and Indemnity.

### **8. MINIMUM DISTRIBUTION AMOUNT**

Rightsholders will be notified when distributable funds allocated to them have accrued during the trust period to:

- \$50.00 and over for mandated New Zealand rightsholders;
- \$100 and over for non-mandated New Zealand rightsholders;
- \$200.00 and over for RROs.

Amounts allocated to New Zealand rightsholders that are below the following levels will not be accrued and will be transferred into the appropriate distribution pool:

- Mandated rightsholders: \$10.00;
- Unmandated rightsholders: \$20.00.

At the end of the trust period any amounts below the following levels will be transferred into the appropriate distribution pool at CLL's discretion taking into account the provisions of paragraph 13:

- Mandated rightsholders: \$50.00;
- Unmandated rightsholders: \$100.00.

## **9. CLAIMING FUNDS ALLOCATED**

New Zealand rightsholders claim the amount shown on the Notification by providing a GST invoice and signing a Distribution Warranty and Indemnity form which states:

- that the funds allocated are due to the claimant as owner or controller of the copyright reproduction right in the works set out in the Notification and to those authors, illustrators and other third parties who have contributed to the works;
- that the claimant will distribute to third parties the amounts due to them in accordance with their contractual arrangements;

and indemnifies CLL against any liability incurred by CLL as a result of any third party claiming an interest in the total amount claimed.

No distribution will be made to New Zealand rightsholders until a GST invoice and a signed Distribution Warranty and Indemnity is received from the claimant.

Where the claimant is:

- not registered for GST or is
- an estate or beneficiary of an estate

a letter stating that they own the rights to the work/s is required to enable distribution.

## **10. DISTRIBUTION OF LICENSING REVENUE RECEIVED FROM OVERSEAS RROS**

### **10.1 Distribution to New Zealand rightsholders**

Licensing revenue received from overseas RROs is to be distributed to New Zealand publishers or authors within 12 months of receipt by CLL where appropriate attribution records are supplied by the RRO remitting the funds.

### **10.2 Unattributable Overseas Revenue**

Where no such records are provided, funds remitted will be placed into:

- the Indemnity Fund;
- the Unattributable Overseas Income account for redistribution;
- the Cultural Fund; or
- as otherwise determined by the Board.

### **10.3 Distribution of Funds remitted in error**

Funds remitted to CLL by other RROs in error for works not owned by New Zealand rightsholders are to be attributed to the correct rightsholder and included in the distribution of New Zealand licensing revenue to overseas RROs. The usual administrative charge will be incurred and deducted from the amount redistributed.

## **11. EX GRATIA PAYMENTS**

CLL's Board of Directors can elect to make payments to rightsholders who can establish substantial copying of their works under a CLL licence that has not been identified by the copying records.

To make an ex-gratia claim, rightsholders are required to provide a statutory declaration setting out the details of the work copied, including pages copied, number of copies made as well as where the copies were made. They will also be required to supply evidence that the copies were made under a CLL licence and not under a fair dealing provision of the Copyright Act 1994 or a direct licence from the rightsholder.

In determining whether an ex-gratia payment should be made, the Board will take into account payments from previous distributions.

## **12. DISPUTE RESOLUTION**

Any dispute regarding an amount paid or payable to a rightsholder must be made in writing by or on behalf of the rightsholder and must give the name and address of the person or organisation making the complaint. The matter shall be referred to the CEO of CLL for determination. If the matter remains unresolved, it shall firstly be referred to the Board of Directors of CLL for decision. If the rightsholder remains aggrieved, the matter shall be referred to the mediation of a mediator to be agreed by the parties or, where the parties cannot agree on a mediator within 14 days of a party referring a dispute to mediation, appointed by the Chairperson of LEADR New Zealand Incorporated or the Chairperson's nominee, whose decision will be final and binding upon the rightsholder and CLL. The costs and expenses of the mediator shall be shared by the parties equally. Should mediation be unsuccessful, then such dispute may be referred by either party to arbitration of a single arbitrator appointed by the Arbitrators Institute of New Zealand or its nominee and the decision of the arbitrator shall be binding on the parties.

## **13. TRANSFER OF FUNDS FOR REDISTRIBUTION**

At the end of the trust period, any undistributed funds will relate to one of the following categories:

- Unidentified copying;
- Allocated to rightsholders CLL has been unable to locate;
- Allocated to rightsholders who have not claimed the money; or
- The total amount allocated to the rightsholder from all distributable funds is under \$100.00.

At the end of the trust period (or longer period as determined by CLL), after every reasonable effort has been made to correctly identify and locate the rightsholders to whom monies have been allocated, undistributed funds may be transferred to appropriate distribution pools for redistribution where CLL considers that there is insufficient information available to the company to enable an equitable and accurate distribution. Such funds will be transferred without any further deduction of operating costs.