



# EU IP Key SEA

## Session 11: Best Practices on Principles and Tools For Documentation and Distribution

Ramani Ramalingam, Consultant  
Kuala Lumpur | 19 September 2019





# CONTENTS

1

Documentation

2

Distribution

3

Q & A

# 1. Documentation



# Objectives of Documentation and Data Management

- Proper documentation of data about members & sound recordings owned or represented by them
  - Collection & registration of accurate information pertaining to all recordings owned/managed by member companies;
- To ensure accurate distributions based on usage information and automated matching process;
- To prove ownership & representation of rights being licensed to users; thus, it is of critical importance for MLCs to have complete & proper information about the recordings & right holders whose rights they represent

# Documentation - Title Registration

- Information on sound recordings and performers come from both local & international sources:
  - Local label registrations
  - International label registrations (**Note:** use existing global resources/services for recordings' data)
  - Affiliated MLC notifications
- Proactive process in acquiring local data - right holders must be encouraged and facilitated to register their repertoire data
- Use usage information (radio playlists) to prioritise the data collection!
- Membership contract obligates right holder to provide information for each recording:
  - To promptly notify CMO if at any time during the licence period, the recording company no longer owns or controls the rights in any recording; and
  - To promptly notify CMO of transfer of ownership or control of any of the labels, or if the recording company acquires ownership or control of a label which is not previously notified to CMO (including launch of a new label)

# Documentation - Recording Data

- Title and version of recording (track)
- Main/featured artist
- Rights ownership information
- Performers' lineup
- Country in which the recording was originally made
- Year in which the recording was originally released
- Label under which the recording was originally released
- Country of citizenship, residence or incorporation of:
  - (i) Record company or label for the recording; and
  - (ii) Session musician & guest artist who appeared on the recording;
- International Standard Recording Code (ISRC)
- Catalogue number of product(s) on which the recording is released can be registered to help in “matching” usage

✧ *Similar requirements for music videos*



# Recording Data

## Static facts

- Main artist
- Title / version
- ISRC
- Duration
- Performers

## Subject to change

- Rights ownership
- Territory
- Period
- Use-type

# Data issues

- Data quality must be managed to achieve efficiency/accuracy
- Recordings vs. Product data
  - Same 'track' appears on multiple products
  - MLCs deal with recordings
  - Product data contains duplicates which cause errors
- Missing version
  - Versions are usually different (live vs studio)
  - MLC needs the version information
- Duplicate data
  - Different instances cause errors
  - One instance may be updated with new rights owner or performer, but payout might use the other instance



# Enriched airplay

- Sometimes MLCs use airplay reports as a source of data, enriching it via internet searches;
- This is non-authoritative, grave risk of error
- Generally causes many instances of 'non-identified rights owner' and non-payout
- But can be useful as a 'placeholder' to allocate value for future payout via a claims process

# Some Golden Rules

- Look for authority – authority is the right holder!
- Identification: ISRC;
- Recordings above “products”;
- Actively manage duplicates;
- Proactively acquire data;
- Manage data by value;
- Have dispute resolution procedures in place for rights conflicts;
- Do not reinvent the wheel, use existing resources!

# Use of Technology: distribution

## Distribution:

- Increasing use of ACR (Automated Content Recognition) for monitoring of use and distribution;
- DDEX MLC Message Suite:
  - standardises the digital supply chain,
  - automates recording metadata information exchange (MLCs/companies);
- ISRC (International Standard Recording Code) – recording identifier and crucial element for fast and accurate distributions.



# Distribution systems and repertoire data

- MLCs are encouraged to use existing resources;
- MLCs have access to systems developed elsewhere:
  - Back office services, including identification (e.g. PPL),
  - Standard software (Apollon, BIConcepts),
- SoundSys -
  - cost-effective solution/project in South-East Asia to provide cloud-based shared back office service to distribute revenue as close as possible to actual usage.



## 2. Distribution



# Distribution – general principles

- Distribution at track level per each type of use, as closely to the actual use as possible insofar as it is economically reasonable;
- No direct or indirect discrimination between right holders;
- Deductions only to cover actual operating costs; no additional deductions unless explicitly agreed by the RHs;
- Unidentified and unclaimed monies must be distributed proportionally to the identified right holders.

# Standard distribution principles

- Aim :
  - High quality services to RHs and other MLCs,
  - Harmonised rules allowing the sharing of resources,
  - Increased efficiency and transparency;
- Sets out standards to be met by distribution policies and rules to ensure high quality of services;
- General principles:
  - Revenues shall be distributed at track level,
    - based on actual use of eligible and protected recordings, and
    - in respect of the services to which the revenue relates, and
    - insofar as economically reasonable;
- If usage reports are not available, any method used to distribute the revenues must reflect the actual use of recordings as closely as possible.

# Standard distribution principles

- Sets out specific principles under each type of use;
- Deviation from these principles accepted to comply with national laws;
- Proxies and samples across all sectors, including broadcasting and PP:
  - Selection of the reports must be transparent, based on objective criteria and analysis,
  - Reflect actual use as closely as possible,
  - Only high-quality reports may be selected,
  - Must be regularly reviewed and re-assessed;
- Recordings which do not qualify for remuneration 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;



# Radio and TV broadcasting

- Revenues shall be distributed based on actual use.
- Revenues shall be allocated for each station or channel separately, taking into account:
  - the distributable amount for the station or channel;
  - the cumulative reported duration of all recordings broadcast on that station or channel; and
  - the cumulative reported duration of usage of each individual recording; revenues should be allocated per recording.
- Allocation shall be based on duration of recordings and partial use of recordings in seconds.
- Different weighting (e.g. by day/night) is permitted;
- 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.
  - for small and medium radio stations 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 collected from all similar stations.

# Public performance

- Revenues collected from public performance shall be distributed based on actual use and usage reports as far as they are available.
- If users are not able to provide usage reports, the revenues can be allocated using a mix of potential sources for obtaining data on the actual use and the relevant proxies:
  - reports from users (using statistically representative samples where relevant);
  - reports from ACR companies;
  - reports from background music providers (on what has been copied and ideally playout data); and
  - radio reports.
- Some examples:
  - **Discotheques.** A small panel of discos statistically representative of the overall population of discotheques may be created and reviewed frequently,
  - **Shows, Expos, Music on Hold.** Revenues can be allocated per recording when invoiced (this is possible because of the small number of the recordings used).
  - **All other spaces.** Market studies should be made regularly in order to obtain reliable statistics on the source of the public performance in these public places
- MLCs commission market surveys to ensure that their usage data collection practices are up to date

# Recommendations for the Implementation of the Principles

- Guidance on data quality standards, procedures and processes to ensure compliance -- Annex 1.
- Areas covered:
  - Reports from users,
  - Repertoire registration,
  - Data formats and fields,
  - Rights data,
  - Rights conflicts,
  - Unmatched and unclaimed usage,
  - Processed/not allocated.

## • **Distribution Rules Need to:**

- Comply with legislative or regulatory provisions, if any
- Be bound by the terms & conditions of agreements between MLCs and its (1) Members, & (2) Foreign MLCs – bilateral agreements
- Comply with standards agreed by global MLCs and recorded music producers – IFPI MLCs' Standard Distribution Principles
- Apply equal treatment of domestic and international sound recordings and right holders
- Be Transparent – Distribution Rules available to Members & sister societies; annual audited accounts by external auditor
- Provide Be conducted regularly; at least once a year; more frequent – better
- Operating cost and fees should be based on actual costs and properly documented

# Recommended Practice

- The distribution rules and their implementation shall be overseen by a Distribution Committee.
- MLCs must develop, approve, and publish their distribution schedule well in advance of the distribution taking place.
- MLCs should provide royalty statements to right holders itemized per track, per user, per use-type and per period of use.

# Distributable Revenues

- **Gross Revenues Collected** (Total Collections plus Investment Income)  
**Minus** :
  - Actual Administrative Expenses for Year (Averages 10-15% for well established societies; higher at 20-30% for newer societies) **Minus**
  - Taxes, & provisions for reserve, if any **Equals**
- **Net Distributable Revenues**
- Total Net Incomes, after deductions, would usually contain 3 elements:
  - (i) Net domestic licence income;
  - (ii) Net non-licence income (e.g. interest & other revenues);
  - (iii) Net foreign income

## • **Operating Costs**

- Should be based on actual costs;
- Variable costs deductions from different revenue streams is permitted and must be based on the costs actually attributable to the revenue streams
  - Different costs may be applied to the management of the different rights and usages, eg: costs of broadcast licensing differ from costs of public performance licensing, as well as for processing distributions
- The same distribution fees for their domestic members must be applied to the members of foreign MLCs – non-discrimination

## • **Acceptable Alternative**

- It is acceptable to establish a fee as a single percentage, but this should be based on actual and reflect the true and accurate operating costs

# Usage Data Collection

- The accuracy & equity of any distribution process is dependent on quality & availability of usage data; various data collection methods used by MLCs:
  - a) Full (100%) census
    - Radio, TV, cable broadcasting, airlines, live concerts, etc
  - b) Statistical sampling and income pooling
    - Sampling system for collection and processing of usage data on the basis of certain objective samples of uses and income streams, eg: 1 in 3 days
  - c) Use of analogous data and information
    - Where direct usage data is not available (e.g. in the public performance field), mix of potential sources can be used (using statistically representative samples where relevant)
  - d) Background music suppliers and market surveys
    - Many users outsource provision of background music to third party operators that also supply track or recording use information.
    - MLCs commission market surveys to ensure that their usage data collection practices remain valid



# Usage Returns

- Legal and/or contractual obligation for users to submit reports of works used by them. Examples of legal obligations:
  - Article 17, EU CRM Directive - users provide a CMO, within an agreed or pre-established time and in an agreed or pre-established format, with such relevant information at their disposal on the use of the rights represented by the collective management organisation as is necessary for the collection of rights revenue and for the distribution and payment of amounts due to right holders
  - Section 13a, German CR Administration Law –
    1. organizers of public communications of copyright works shall ... obtain beforehand authorization of the collecting society
    2. After the event, organizer shall send to collecting society a list of works used at event (unfortunately with rather wide exceptions)
    3. Where information for the distribution of revenue is needed, the broadcasting organizations shall provide to the collecting societies with such information

# Usage Returns - *continued*

- Legal and/or contractual obligation for users to submit reports of works used by them. Examples of legal obligations:
  - Article 33, CIOA, Taiwan – “A utilizer shall periodically provide the intermediary organization concerned with a utilization list for basis to calculate royalty to be distributed.”
- Provision of usage data must be stipulated in the licence contract with users
- Logs are provided on census (100%) basis
  - If not possible, sample is acceptable as long as it reflects the actual use as closely as possible

## **LOGS FROM RADIO STATIONS (Playlists)**

- Logs should contain the ff. Information:
  - Title of musical track
  - Name of producer, composers & lyricists
  - Names of performers
  - Number of times track was played
  - Duration of play
  - Interval Music
  - Promos & Station IDs

## **LOGS FROM TV STATIONS (Cue Sheets)**

- Cue Sheets should include the ff. information:
  - Program Title or Title of Film
  - Episode number/title
  - Main actors
  - Year of Production
  - Time and date of broadcast
  - Interval Music
  - Promos & Station IDs

### **If there are no cue sheets submitted by TV stations**

- Recordings of CMO's own monitoring
- Music Analysis
- TV Guides
- Survey Research Companies
- Cue Sheets from Sister Societies (for films and syndicated TV programs)

# Unmatched Usage

- **Recommended Practice**
  - MLC may exclude unmatched usage from allocations.
  - Retain adequate reserves to meet claims from unrepresented right holders within the prescription period (normally 3 years).
  - Circulate the list of unmatched usage to its members for identification/claim.
  - Encourage continuous registration of member repertoire.

# Funds for Distribution

- MLCs shall segregate the funds 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:
  - deducting operating costs/fees (see Operating Costs and Fees);
  - deductions for general reserves (see General Reserves);
  - deductions of applicable taxes;
  - any other authorised deductions;
  - any additional sources of revenue, such as interest, income arising from investments of rights revenue etc; and
  - any reserves for redistribution (unclaimed or General Reserves).
- MLCs shall maintain information about the funds in a manner that enables these details to be reported to right holders.

# General Reserves

- It is common to make reserves for legal risks.
- Recommended Practice
  - General reserves should only be maintained at a level reasonably required to deal with third party claims and account for legal risks.
  - Revenue held in reserve should be distributed to right holders at the expiry of the prescription period.
- To Be Avoided
  - Deductions or reserves for purposes other than 3rd party claims and legal risks shall not occur unless national law allows for it and right holders have given their consent.
  - No amounts should be deducted for social and/or cultural purposes from amounts due to another MLC pursuant to a representation agreement unless the other MLC has given express consent.

# Compliance with IFPI Code of Conduct – Distribution

1. Right holders to provide accurate, complete and timely information on their rights, repertoires, new recordings, including use of industry standard recording identifiers
2. Accurately identify usages & distribute revenues based on actual use at track level -
  - This should be the rule in distribution of revenues from broadcasting;
  - Public performance revenue maybe distributed using statistical samples, monitoring reports, best available proxy reports, if usage data is unavailable
3. Distribute collected revenue at least twice a year; or once a year with advances to right holders not exceeding the amounts actually due to the right holders for relevant period; > 6 months after collection
4. Deduct from the collected sums only the appropriate operational costs
  - No additional deductions unless agreed by rights holders or stipulated by law
  - Provide details of such deductions, indicating whether statutory or voluntary

# Compliance with IFPI Code of Conduct – Distribution

5. Distribute unidentified & unclaimed royalties proportionately to identified right holders no later than 3 years after end of calendar year in which the monies were collected -
  - After best efforts to identify and locate the correct recipients
  - Without discrimination between members and non-members
  - According to usage information
6. Distribution rules & practices shall be non-discriminatory on the grounds of nationality, ownership, genre, or otherwise without objectively justifiable reasons.



# Compliance with IFPI Code of Conduct – Distribution

- Right Holders to provide information on their rights and recordings
- Distribute on track level
- According to actual use
- Not later than 6 months after collections
- At least twice a year or provide advances
- Deduct only actual operation costs
- No discrimination on grounds of nationality, ownership, genre or otherwise
- MLC shall have general membership meeting at least once a year, with powers inter alia to approve any changes to the statutes and general distribution policies

# Some Distribution Challenges

- Membership expectations
  - 70% of royalties go to 30% of members
- High costs in early years
  - No distribution in initial years
- Lack of technical capabilities
- Costs of establishing appropriate technical systems
  - Incomplete & inaccurate databases resulting in inaccurate distributions and costly processes

# Transparency & Accountability

- Recording company “...may at (its) own expense ... appoint an independent auditor to examine the books of account and records of PPCA to check that the amounts allocated or paid ... have been correctly calculated in accordance with the Distribution Policy. PPCA will provide ... reasonable access to PPCA’s premises, and will make available all relevant books of account and records for inspection by your auditor, provided that your auditor first gives PPCA a written and signed undertaking that he or she will report to you only in relation to the correctness or otherwise of the amounts allocated or paid to you, and that he or she will not refer to, or disclose any information about, any amounts allocated or paid to any other...”
- S9 of German CR Admin Law requires a collecting society to draw up annual accounts that corresponds to the real circumstances and that they shall be audited by one or more qualified auditors. Annual accounts must be published in Official Bulletin not later than 8 months after close of financial year

# Q & A



**Thank you**

