

**Mechanical-Copyright Protection
Society Ltd
and
Performing Right Society Ltd**

**Rules governing Infringement
Claims 2008**



THE MUSIC ALLIANCE

1 Introduction

- 1.1 This document sets out the rules and procedures that the Societies will follow where one person alleges that another has infringed the copyright in one or more of his Works ("the Rules").
- 1.2 It is important to emphasise that the Rules describe matters of procedure only. Whether or not a copyright in a Work has been infringed is ultimately a question of law to be determined in accordance with the facts of the case and the Societies do not undertake any adjudicative function in relation to the substantive merits of an infringement claim.
- 1.3 For ease of reference the Rules are arranged as follows: Rule 2 contains provisions governing the interpretation of this document; Rule 3 sets out the Societies' requirements for making a valid Infringement Claim; Rule 4 sets out the procedures to be followed by the Societies on receipt of valid Infringement Claim; Rules 5 and 6 describe MCPS' and PRS' respective licensing procedures in relation to works which are the subject of an Infringement Claim; Rule 7 sets out the Societies' reporting and accounting procedures in relation to royalties that are the subject of an Infringement Claim; and Rule 8 contains general provisions.
- 1.4 These Rules take effect from 1st January 2008 ("the Commencement Date") and apply to:
 - 1.4.1 Infringement Claims made on or after that date irrespective of when the infringement in question was alleged to have occurred; and
 - 1.4.2 unless otherwise provided in these Rules, to Infringement Claims made before the Commencement Date.
- 1.5 The Rules apply to every Infringement Claim in which at least one of the Claimants is at the time of such Claim a Member of PRS or MCPS or an Affiliated Society, and are in all respects subject to the order of any UK Court or arbitrator having jurisdiction over the matters in question.

2 Definitions

- 2.1 "Affiliated Society" means any performing right and/or mechanical right society outside of the United Kingdom with which PRS and/or MCPS, as the case may be, is for the time being affiliated;

- 2.2 "Copyright Owner" means in respect of any act restricted by copyright in a Work, the person in whom for the time being is vested the right to authorise other persons to do that act in the United Kingdom;
- 2.3 "CPR Rules" means the Civil Procedure Rules which are in force in England and Wales from time to time;
- 2.4 "Disputed Royalties" means the royalties, fees or other monies received by a Society in respect of an Infringing Work;
- 2.5 "Existing Infringement Claim" means in relation to an Infringement Claim, any claim which immediately before the Commencement Date was being dealt with as such under the Societies' respective policies governing infringement claims;
- 2.6 "Independent Musicologist Report" means a report prepared by a musicologist stating that in his professional opinion there is sufficient similarity between the Musical Work or substantial part thereof and the Infringing Work as to support the bringing of a Legal Claim in respect of that Work by the Copyright Owner.
- 2.7 "Infringement" means, in respect of a Musical Work, the doing of any act restricted by copyright in that Work without the consent of the Copyright Owner; and "Infringed", "Infringer" and "Infringing" shall each be construed accordingly;
- 2.8 "Infringement Claim" means any claim in which a person claims to be entitled to the whole or part of the Disputed Royalties; and "Claimant" means the person making an Infringement Claim;
- 2.9 "Infringement Dispute" means any dispute in which it is alleged that copyright in a Musical Work has been Infringed;
- 2.10 "Infringing Work" means the Musical Work the making or publication of which is alleged in an Infringement Dispute to be an Infringement;
- 2.11 "In writing" means written and/or printed and includes any mode of representing or reproducing words in readable form;
- 2.12 "Legal Claim" means a Legal Claim relating to an Infringement Dispute issued in the Court of Competent Jurisdiction in the United Kingdom in accordance with Part 7 of the CPR Rules;
- 2.13 "Member" means:
- 2.13.1 in relation to MCPS, any person, firm or corporation which is for the time being a party subject to the Membership Agreement either directly or through an associated firm or company;
 - 2.13.2 in relation to PRS any person, firm or corporation which has been admitted as and is for the time being a member of the Society pursuant to the Articles of Association;
- 2.14 "Membership Agreement" means the Membership Agreement between MCPS and its members;
- 2.15 "Musical Work" means any copyright Musical Work (including any lyrics or associated words) which is for the time being in the repertoire of the Societies;

- 2.16 "Share" means such proportion of the Disputed Royalties as may be allocated from time to time by the Societies for distribution to a person interested in that Work;
- 2.17 "Society" means either PRS or MCPS, as the context so requires, and reference to "Societies" is a reference to both PRS and MCPS;
- 2.18 "Supporting Documentation" means any documentation required to be supplied by a Claimant to the Society under Rule 3.
- 2.19 "Suspense Date" means:
- 2.19.1 the date on which the Society suspends distributions of the Disputed Royalties under these Rules; or
 - 2.19.2 in relation to an Existing Infringement Claim, the date on which the Societies first suspended the distribution of the Disputed Royalties;
- 2.20 Words importing:
- 2.20.1 the singular number includes the plural number and vice versa;
 - 2.20.2 the masculine gender includes the feminine and neuter.

All other words and expressions shall where the context so admits have the same meaning as under the Membership Agreement or PRS' Articles of Association.

3 Notifying the Societies of an Infringement Claim

- 3.1 In this Rule,
- 3.1.1 "New Infringement Claim" means any Infringement Claim made on or after the Commencement Date;
 - 3.1.2 "Notice of Infringement Dispute" means the letter or other communication in writing in which the Claimant first notifies the other party (the Alleged Infringer) of his allegation of Infringement and his intention to seek relief (whether by negotiation or otherwise) against that party.
- 3.2 A Claimant may at any time make a New Infringement Claim to the Societies.
- 3.3 An Infringement Claim shall not be treated as having been made for the purposes of these Rules unless:
- 3.3.1 it is an Existing Infringement Claim; or
 - 3.3.2 in the case of a New Infringement Claim:
 - (a) it is made in writing and sent to the Copyright Department at Copyright Department at 41 Elgar House, Streatham, SW16 1ER; and
 - (b) it contains the following information:
 - (i) the name of the Infringing Work;

- (ii) the identity of the Alleged Infringer;
- (iii) in relation to the Musical Work the copyright in which the Alleged Infringer is alleged to have Infringed: -
 - (aa) the name of the Work;
 - (bb) whether the Infringement Dispute relates -
 - only to the music;
 - only to the lyrics or any other words associated with the music;
 - to the music and the lyrics/associated words;
 - (iv) the Share of Disputed Royalties to which the Infringement Claim relates ("the Disputed Share");
 - (v) the date on which the Infringement or, if a series of Infringements, the earliest date on which the facts giving rise to the Infringement Dispute are alleged to have occurred;

and

- (c) it is supported by a copy of either:
 - (i) the Notice of Infringement Dispute and a copy of the Independent Musicologist Report; or
 - (ii) the Legal Claim.

3.4 The Societies reserve the right to reject any Supporting Documentation that on its face does not support the Claim and/or to determine whether or not any documentation supplied pursuant to this section constitutes Supporting Documentation. However, the Societies will not undertake to make an assessment of the substantive merits of a Claimant's Claim on the basis of any Supporting Documentation supplied pursuant to these Rules. For the avoidance of doubt, the Societies will take the Supporting Documentation at face value and the member providing the Supporting Documentation retains the responsibility for the authenticity and/or the qualification of the parties preparing that Supporting Documentation and the content thereof.

4 Procedure following receipt of an Infringement Claim

- 4.1 Within 10 working days following receipt of a New Infringement Claim and Supporting Documentation, the Societies will:
 - 4.1.1 suspend the distribution of the Disputed Share ("Suspense Procedure");
 - 4.1.2 send a copy of the documents and information referred to in Rules 3.3.2(a) and 3.3.2.(c), other than the Independent Musicologist Report, to the Alleged Infringer; and
 - 4.1.3 notify the Alleged Infringer of:

- (a) the fact that the Suspense Procedure has been implemented;
- (b) the Disputed Share to which the Procedure will apply; and
- (c) in relation to the Disputed Share, the Suspense Date.

4.2 In relation to an Existing Infringement Claim:

4.2.1 in respect of which distributions of the Disputed Share had not been suspended prior to Commencement Date, the Societies will implement the Suspense Procedure and, so far as it is practicable to do so, send and advise the Alleged Infringer of the documents and matters referred to Rules 4.1.2 and 4.1.3;

4.2.2 in respect of which distributions of the Disputed Share had been suspended prior to Commencement Date, the Societies will continue to operate such procedure in accordance with and subject to the following provisions of this Rule.

4.3 Subject to the provisions of Rule 4.4, the Societies will suspend the distribution of the Disputed Share under the Suspense Procedure until such time as the Societies either:-

4.3.1 are notified by all parties that the Infringement Dispute has been resolved and of the person to whom the Disputed Share should be paid ("Notice"); or

4.3.2 receive a certified copy of an order of a court of competent jurisdiction or arbitration order disposing of the Infringement Dispute ("Order").

4.4 The Societies will suspend the distribution of the Disputed Share until the Dispute is resolved in accordance with the provisions of Rule 4.3.

4.5 In relation to an Existing Infringement Claim to which Rule 4.2.2 applies the Societies will continue to suspend the distribution of the Disputed Share until the expiry of the two year period from the Suspense Date (the "Initial Period"). On expiry of the Initial Period, the Societies shall distribute the Disputed Share to the Alleged Infringer claiming to be interested in the Share in accordance with Rule 4.6 unless before the expiry of the Initial Period:-

4.5.1 the Claimant has produced the Independent Musicologist Report; or

4.5.2 the Claimant has issued a Legal Claim against the Alleged Infringer the proceedings in which are still pending; or

4.5.3 all the parties have agreed that the Societies should continue to suspend the distribution of the Disputed Share,

in any of which cases Rule 4.4 shall apply.

4.6 Within 10 working days of:

4.6.1 receiving the Notice or Order under Rule 4.3; or

4.6.2 the expiry of the Initial Period referred to in Rule 4.5

the Societies shall cease to operate the Suspense Procedure in relation to a Disputed Share and will distribute such Share in accordance with the terms of the Notice or Order, or in accordance with Rule 4.5, as the case may be. The parties shall be responsible for accounting as between themselves in relation to distribution of the Disputed Royalties made to any of them prior to the Suspense Date and nothing in this Rule shall be deemed to impose or construed as imposing on the Societies any obligation to make or effect on behalf of the parties adjustments to such distributions.

5 The Licensing of Works in Dispute by MCPS

- 5.1 Licences for the use of a Work which is alleged to be an Infringing Work and is for the time being the subject matter of an Infringement Dispute will continue to be granted under the terms of any applicable Standard Licensing Agreement, Blanket Licence Agreement or Licensing Scheme.
- 5.2 Where no such Agreement or Scheme applies, or where such an Agreement or Scheme applies but requires that the express consent of the Member be obtained for the relevant reproduction or other use, the following provisions will apply:
 - 5.2.1 where all the parties to the Infringement Dispute, are Members no further licences for the reproduction of the relevant Work(s) will be granted by MCPS without the consent of each such Member;
 - 5.2.2 where not all the parties to the Infringement Dispute are Members but more than one Member is involved, the consent of each such Member is again required;
- 5.3 Where a Member is party to an Infringement Dispute, the Member should be aware that if such Dispute is not resolved in the Member's favour, the warranties and indemnities under Clause 10 of the Membership Agreement may apply in respect of any liability incurred or loss suffered by MCPS in connection with any valid or successful claim made against MCPS in respect of a licence granted by MCPS in accordance with the rules set out above.
- 5.4 Where an Infringing Work which is the subject of an Infringement Dispute is licensed by MCPS, the distribution of any Disputed Royalty collected in respect of such Work will be suspended pursuant to and in accordance with Rule 4.

6 The licensing of Infringing Works in Dispute

- 6.1 PRS' blanket licences exclude from the scope of the grant the exercise of the performing right in a Musical Work by means of a recording of that Work if the making of such recording Infringed copyright in that Work.
- 6.2 Where an Infringing Work which is the subject of an Infringement Dispute is licensed by PRS, the distribution of any Disputed Share collected in respect of such Work will be suspended pursuant to and in accordance with Rule 4.
- 6.3 Where a Member is party to an Infringement Dispute, the Member should be aware that if such Dispute is not resolved in the Member's favour, the warranties and indemnities under Clause 4 of the Deed of Assignment or sub-clauses 4(a) and 4(c)(i) of the new form membership agreement (as the case may be) may apply in respect of any liability incurred or loss suffered by PRS in connection with

any valid or successful claim made against PRS in respect of a licence granted by PRS in accordance with Rule 6.2.

7 Disputed Royalties

- 7.1 This Rule sets out the extent to which the Societies undertake to disclose details of the Disputed Royalties which are the subject of an Infringement Claim.
- 7.2 With effect from the Suspense Date until such time as the Societies cease to operate the Suspense Procedure in accordance with these Rules, the Societies will send accounting details relating to the Infringing Work to each of the parties to the Infringement Dispute on request. Copies of royalty accountings sent to a party prior to the Suspense Date will not be provided to the Claimant unless the party to whom such accountings were sent consents.

8 General

- 8.1 The parties to an Infringement Dispute must use their reasonable endeavours to resolve that Dispute as quickly as is reasonably possible.
- 8.2 Without prejudice to their obligation to provide documentation required pursuant to these Rules, the parties to an Infringement Dispute shall provide the Societies with such other information or documentation as the Societies may reasonably require in connection with the subject matter of the Infringement Dispute or the operation of these Rules.
- 8.3 In the spirit of the CPR Rules the Societies will send documentation provided by one party pursuant to these Rules to the other if requested by both parties to do so. The Societies will only provide copies of documentation which has been received specifically in connection with the Infringement Dispute and will not search their archives for documents received for other purposes. The Societies, save to the extent that they may be required to do so under a Court Order, shall otherwise keep confidential and not disclose to any party any information or documents submitted to them by or on behalf of a party to the Infringement Dispute without the consent of that party.
- 8.4 Provided that the Societies have acted in accordance with the Rules, no claim will lie against the Societies for any loss or damage which a party claims to have suffered by reason of the Societies granting or refusing to grant any licence in relation to the Infringing Work or collecting or distributing or suspending the payment of any Disputed Royalties or Share or making any claim in connection therewith.