

Rules Governing Samples



THE MUSIC ALLIANCE

1 Introduction

1.1 This document sets out the rules and procedures (“the Rules”) that the Societies will follow where: -

1.1.1 a person applies to MCPS or the Copyright Owner for a licence either to make either a Sound-Bearing Copy of a Work or to reproduce an existing Sound-Bearing Copy of that work for the purpose of incorporating it into a new work with a view to distributing Sound-Bearing copies of the same (“Application”);

1.1.2 a person applies to register or the Societies are otherwise notified of a Work which contains a copy of a Work in which another person is interested (“Registration”);

1.1.3 a Copyright Owner claims that notwithstanding that he is willing to enter into or has entered into a sample clearance settlement agreement to license the making or reproduction of a Sound-Bearing Copy of the Work for the purpose of incorporating it into a New Work, no agreement has been reached as to the share of royalties that should be paid to him in consideration of such licence.

1.2 The Rules do not apply where the Copyright Owner unconditionally withholds, or before agreement has been reached as to the share of royalties to be paid to him, revokes the licence described in Rule 1.1. For the purposes of 2 these Rules the Societies will only regard a licence as having been unconditionally withheld or revoked where the Copyright Owner has satisfied the requirements of Rule 3.2, in which case the dispute will be dealt with under the Societies’ **Rules governing Infringement Claims** from time to time.

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 procedures to be followed on receipt of an Application; Rule 4 describes the procedures to be followed on Registration; Rule 5 sets out the procedures for notifying the Societies of a Sampling Claim; Rule 6 sets out the procedures to be followed by the Societies following receipt of a Sampling Claim; Rule 7 deals with the situation when legal proceedings concerning a Sampling Dispute are issued; Rules 8 and 9 deal with MCPS and PRS’ respective licensing of Works which are the subject of a Sampling Dispute; Rule 10 deals with the provision to the parties in a Sampling Dispute of information relating to Disputed Royalties; Rule 11 contains transitional provisions for handling sampled works made prior to 1 August 1999; and Rule 12 contains general provisions.

1.4 These Rules take effect from 1 April 2005 in relation to Applications, Registrations and Claims made on or after 1 August 1999. Subject to Rule 10, the Rules replace the ***"MCPS' New Sample Procedure"*** which came into effect on 1 August 1999.

1.5 Queries about the contents of this policy or its operation should be directed to the Samples Registration Team in the Copyright Department, Elgar House, 41 Streatham High Road, London, SW16 1ER

2 Definitions

In these Rules unless the context requires,

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

2.2 "Application" means an application in writing for a Sample Clearance Settlement agreement;

2.3 "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 make and to authorise others to exercise the Rights in his Work in the United Kingdom;

2.4 "CPR Rules" means the Civil Procedure Rules which are in force in England and Wales from time to time;

2.5 "Disputed Royalties" means, in relation to a Sampling Dispute, any royalties, fees or other monies received by the Societies in respect of a New Work;

2.6 "Infringing Work" means a New Work the making of which is alleged by the Copyright Owner to have infringed copyright in his Work;

2.7 "In writing" means written and/or printed and includes any mode of representing or reproducing words in readable form;

2.8 'Legal Claim' means a Legal Claim relating to a Sampling Dispute issued in the Court of Competent Jurisdiction in the United Kingdom in accordance with Part 7 of the CPR rules;

2.9 "Literary Work" means any words intended to be spoken with a musical work and which is for the time being in the Repertoire of the Society;

2.10 'Member' means:

2.10.1 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;

2.10.2 in relation to PRS any person, firm or corporation who has been admitted as and is for the time being a member of the Society pursuant to the Articles of Association;

2.11 "Musical Work" means a copyright Musical Work which for the time being is in the repertoire of the Society;

2.12 "New Copyright Owner" means in respect of any act restricted by copyright in a New Work, the person in whom for the time being is vested the right to authorise other persons to do that act in relation to the Work;

2.13 "New Work" means a Musical Work or Literary Work containing a Sample;

2.14 "Person Interested" in a Work in relation to:

2.14.1 the performing right has the same meaning as that ascribed to that term in Rule 1(m) of PRS' Rules;

2.14.2 the Rights administered by MCPS, any Member or other person to whom MCPS may from time to time allocate and distribute monies under clause 7 of the Membership Agreement;

2.15 "Sample" means in relation to a Work of which a Sound-Bearing Copy has been made, such part of that Work as is or is intended to be directly or deliberately reproduced for the purposes of incorporating the same into a New Work (whether or not the Sound-Bearing Copy in which the Work was recorded is also so reproduced);

2.16 "Sampling Claim" means a claim more particularly described in Rule 5;

2.17 "Sample Clearance Settlement Agreement" means the agreement for licence from or on behalf of the Copyright Owner to make a Sample of his Work and to exercise any of the acts restricted by copyright in the New Work insofar as and to the extent that it contains the Sample;

2.18 "Sampling Dispute" means any dispute relating solely to the consideration payable by the New Copyright Owner and/or record company for the Sample Clearance Settlement Agreement. For the avoidance of doubt, a dispute in which the validity or existence of the Sample Clearance Settlement Agreement is at issue is not for the purposes of these Rules a Sampling Dispute;

2.19 "Share" means in relation to a New Work such proportion of the Royalties as may be allocated from time to time by the Society to a Person Interested in that Work;

2.20 "Society" means either PRS or MCPS, as the context so requires, and reference to "Societies" is a reference to both PRS and MCPS;

2.21 "Work" means a Musical Work or a Literary Work or substantial part thereof;

2.22 Words importing:

2.22.1 the singular number includes the plural number and vice versa;

2.22.2 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 MCPS Membership Agreement or the PRS Articles of Association.

3 Application Procedure

3.1 A person who wishes either to make or to copy a Sound-Bearing Copy of a Work for the purposes of including a Sample in a New Work may make an Application to the Copyright Owner by contacting the Publisher and/or record company of the Copyright Owner ;

3.2 Where the Copyright Owner refuses to grant the Sample Clearance Settlement Agreement, he must:

3.2.1 notify the New Copyright Owner and the record company in writing and instruct the record company to cease and desist from the manufacture and distribution of the New Work with immediate effect ("Notice and Instruction"); and

3.2.2 send a copy of such Notice and Instruction to MCPS-PRS Sample Team and Licensing Services (Audio Products).

3.3 On receipt of the copy Notice and Instruction MCPS will refuse to grant licences in respect of the New Work.

3.4 If in breach of the Notice and Instruction the record company manufactures and distributes copies of the New Work, the Member may submit an Infringement Claim under the terms of the Societies' **Rules Governing Infringement Claims** from time to time. However, the Copyright Owner is responsible for initiating legal proceedings in relation to the allegation of infringement of copyright in his Work.

4. Registration and Notification of New Works

4.1 A Member may at any time register with the Societies a New Work in respect of which he claims to be a Person Interested. Registrations shall be in such form as the Societies may from time to time prescribe but must in any event specify:

4.1.1 that the New Work contains a Sample;

4.1.2 the Literary and/or Musical Work from which the Sample was taken;

4.1.3 the name of the Copyright Owner and every other person interested in the Sample;

4.1.4 the Share to which the Copyright Owner and every other Person Interested in the Sample is entitled.

4.2 Where the Societies are notified of a New Work in accordance with Rule 4.1 or by Application under Rule 3.1 or otherwise, then within 25 days of such notification, the Societies will inform all of the Persons Interested of the claims. Subject to clause 4.3, the Societies will issue licences and collect and distribute royalties in respect of the New Work according to the Shares as confirmed by or on behalf of the Persons Interested.

4.3 If the total of the Shares claimed in respect of a New Work exceeds 100%, the Societies will suspend the distribution of the Disputed Royalties pending resolution of the Sampling Dispute in accordance with Rule 6.

5. Notifying the Societies of Sampling Claim

5.1 The Rules apply to every claim in which at least one of the Claimants in relation to the work is a Member of the Societies or an Affiliated Society.

5.2 In this Rule:

5.2.1 "Sampling Claim" means any claim where a Claimant claims to be entitled to a Share of the Royalties greater than that claimed by one or more of the other Persons Interested in the New Work;

5.2.2 Notice of Sampling Dispute means either the letter or other communication in writing in which the Claimant notifies the other party that he disputes the Share;

5.3 A Sampling Claim shall not be treated as having been made for the purposes of these Rules unless:

5.3.1 it is made in writing and sent to the Sample Team in the Copyright Department, Elgar House, Streatham High Road, London; and

5.3.2 it contains the following information:

5.3.2.1 the name of the New Work;

5.3.2.2 the identity of the New Copyright Owner;

5.3.2.3 the name of the Literary Work and/or Musical Work from which the Sample was made;

5.3.2.4 the Share of Royalties to which the Sampling Claim relates;

5.3.3 it is supported by a copy of either the Notice of Sampling Dispute or the Legal Claim.

6. Procedure following receipt of a Sampling Claim

6.1 As soon as practicable following receipt of a Sampling Claim, the Societies will:

6.1.1 place the Disputed Royalties in suspense (“the Suspense Procedure”);

6.1.2 send a copy of the documents and information referred to in Rules 5.3.1 and 5.3.2 to the New Copyright Owners and notify every party claiming to be a Person Interested in the New Work; and

- (a) that the Suspense Procedure has been invoked;
- (b) of the Disputed Share to which the Procedure will apply; and
- (c) in relation to the Disputed Share, the date on which the Suspense Procedure was applied (“Suspense Date”)

6.2 The Societies will suspend the distribution of the Disputed Royalties until such time as the Societies either:

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

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

6.3 Within 10 working days of receiving the Notice or Order, the Societies will distribute the Share in accordance with the terms of that Notice or Order, 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.

7 The Licensing of New Works in Dispute by MCPS

7.1 Licences for the use of a New Work which is for the time being the subject of a Sampling Dispute will continue to be granted under the terms of any applicable Standard Licensing Agreement, Blanket Licence Agreement or Licensing Scheme.

7.2 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: -

7.2.1 Where all the parties to the Sampling 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.

7.2.2 Where not all the parties to the Sampling Dispute are Members but more than one Member is involved, the consent of each such Member is again required.

7.3 Where a Member is party to an Sampling Dispute or is a Claimant, 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.

7.4 Where a New Work which is the subject of a Sampling Dispute is licensed by MCPS, any Disputed Royalty collected in respect of such Work will be held in accordance with the Disputes Rules pending resolution of the Sampling Dispute in accordance with Rule 6.

8 The Licensing of New Works in dispute by PRS

8.1 PRS' blanket licences exclude from the scope of the grant the exercise of the performing right by means of a recording of the Work if the making of such recording Infringed copyright of that Work.

8.2 PRS will continue to license New Works which are the subject of a Sampling Dispute as part of its blanket licensing arrangements. However, to the extent that the Disputed Royalties attributable to the New Work is subject to a Sampling Dispute, the distribution of monies allocated to that Share will continue to be suspended pending resolution of the Dispute in accordance with Rule 6.

9 Disputed Royalties

9.1 This Rule sets out the extent to which the Societies undertake to disclose details of the Disputed Royalties which are the subject of a Sampling Claim.

9.2 With effect from the date on which the Societies suspend distribution of the Disputed Royalties under these Rules (the "Suspense Date") until the date on which the Sampling Dispute is resolved in accordance with Rule 6, the Societies will send accounting details relating to the New Work to each of the parties to the Sampling 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.

10 Transitional Rules

10.1 This section explains the procedures that will be applied to New Works that were created prior to August 1999 and still display "Licence Withheld" flags ("Existing Claims").

10.2 An Existing Claim will be dealt with under the "MCPS' New Sample Procedure", a copy of which may be obtained by contacting the Alliance's Samples Team by email: samples@mcps-prs-alliance.co.uk

11 General

11.1 The parties to a Sampling Dispute must use their best endeavours to resolve that conflict as quickly as is reasonably possible.

11.2 Without prejudice to their obligation to provide documentation required pursuant to these Rules, the parties to a Sampling 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 Sampling Dispute or the operation of these Rules.

11.3 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 relevant New Work or collecting or distributing or suspending the payment of any Royalties or making any claim in connection therewith.

11.4 Where a New Work is the subject of a Sampling Dispute, then, unless all parties to the Dispute agree otherwise, MCPS shall be entitled to direct any or all copyright users to use such label or other credit or designation as MCPS shall direct in order to identify such New Work.

11.5 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 Sampling 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 Sampling Dispute without the consent of that party.