

AP.7A:

Licensing arrangements for audio and audio-visual products supplied with greetings cards at the point of sale



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MCPS general licensing terms

Copyright owners who are members of MCPS, have appointed MCPS to be their exclusive agent for licensing the manufacture and distribution of audio and/or audio-visual products which reproduce their copyright musical works. A licence is required from MCPS where musical works controlled by MCPS are reproduced on CD's, DVD's, cassettes, records and other audio and/or audio-visual products which are supplied with greetings cards.

The licensing arrangements set out in this document explain how users can apply for a licence from MCPS before manufacturing or distributing records, cassettes, CD's, DVD's or any other audio and/or audio-visual products which reproduce MCPS works for supply with a greeting card.

Please note that no MCPS licence will cover rights in existing sound recordings or performers' rights. You may need separate licences and consents in relation to these rights.

The licence shall only apply in the event that the audio and/or audio-visual product, whether in the form of a record, cassette, CD, DVD, or any other such product, is affixed to the greeting card at the point of sale.

The licensing of the AP.7A Scheme is subject to legal rights and obligations constituting contractual terms and conditions which you must fully observe and perform. These terms and conditions contain restrictions and obligations and have legal effect. The terms and conditions are attached.

For the avoidance of doubt, if you wish to manufacture further copies of a Product over and above those applied for in an AFL, you must apply for a further licence and submit an AFL in respect thereof. MCPS cannot guarantee that these terms and conditions will be available for future pressings of Product.

AP.7A Terms and Conditions



"Application For Licence" or "AFL"	means the MCPS AP.7A Licence application form.
"Audio Only Music Product"	means physical product containing audio only recordings of Musical Works.
"Audio-Visual Music Product"	means physical product containing Musical Works in conjunction with images, whether moving or still, where music is the primary feature of the product.
"Dealer Price"	means the highest price as published by the producer (or where appropriate the producer's distributor) payable by any dealer for the minimum quantity of copies of the relevant Product which any dealer can purchase from the producer (or as appropriate the producer's distributor) without the benefit of any applicable discounts, incentives, bonuses and other reductions or deductions. Each Product is subject to a minimum overall product dealer price of £2.
"Music Product"	means Audio Only Music Product and Audio-Visual Music Product where such product is provided for sale together with a greeting card at the point of sale.
"General Interest Product"	means a physical product containing audio and/or audio-visual recordings of Musical Works where music is not the primary feature of the product (and is merely secondary or incidental to other material that is featured) and that product is provided for sale together with a greeting card at the point of sale.
"Licensee"	means the party that submits an AFL and is granted a licence by MCPS subject to these terms and conditions.
"MCPS"	means Mechanical-Copyright Protection Society Limited, contracting for and on behalf of itself and for and on behalf of and as agents of its various members and affiliated societies.
"Musical Work"	means any music (or part thereof) and any lyrics or words written to be used with such music.
"Product"	means any Music Product and/or General Interest Product.
"Repertoire Work"	means each Musical Work the copyright in which is owned or controlled in the United Kingdom by MCPS (or an MCPS member or an affiliated society or an affiliated society member) PROVIDED THAT if one or more of those who own or control the copyright in a relevant Repertoire Work is not MCPS (or an MCPS member or an affiliated society or an affiliated society member), the expression "Repertoire Work" shall only apply to such interest in Repertoire Work as is owned or controlled by MCPS (or an MCPS member or an affiliated society or an affiliated society member).
"Royalty Fee"	means, in relation to each Product, the total royalty fee payable by the Licensee to MCPS in accordance with clause 5.
"Royalty Rate"	means the specified percentage of Dealer Price for each relevant Product as outlined in the royalty rate table in clause 5.

1. Licences

- 1.1 Subject to these terms and conditions, MCPS grants to the Licensee a non exclusive licence to:
 - (a) reproduce Repertoire Works in the United Kingdom (in synchronisation or otherwise with images, whether moving or still) into a master for the sole purpose of manufacturing Products; and
 - (b) manufacture from such master the number of units of each Product specified on the AFL within the United Kingdom.
- 1.2 Notwithstanding clause 1.1 above, MCPS authorises the Licensee to appoint third parties to manufacture any Products (or any component thereof) incorporating any Repertoire Work that is validly licensed hereunder PROVIDED THAT:
 - (a) the Licensee notifies MCPS of the identity and location of the manufacturer; and
 - (b) any breach of these terms and conditions by such manufacturer shall be deemed to be a breach also by the Licensee; and
 - (c) if MCPS obtains reasonable evidence that such manufacturer is infringing any music copyright in relation to either the Products or any other product manufactured at the same premises, then MCPS shall, on reasonable notice, have the right to require the Licensee to manufacture the Product using an alternative third party.

2. Procedure For Applying For A Licence

- 2.1 The Licensee must provide a fully and accurately completed AFL, in the form attached, at least 21 calendar days prior to the intended date of manufacture of a Product.
- 2.2 Upon receipt of a fully and accurately completed AFL, MCPS will process the Licensee's application as follows:
 - (a) MCPS shall inform the Licensee as to which of the Musical Works set out in the AFL are Repertoire Works. If the AFL does not contain any works currently identified as within MCPS' repertoire, the Licensee will be sent a Notification of No Claim.
 - (b) Where the Product contains Repertoire Works, MCPS shall issue an invoice in respect of such Repertoire Works, together with confirmation that a licence is offered to the Licensee, which will be granted upon payment in full of the Royalty Fee by the Licensee. MCPS will also send a notification to the manufacturer indicated on the AFL.
 - (c) Where a Repertoire Work is subject to a first recording restriction, MCPS shall notify the Licensee that a licence has been refused in respect of that Repertoire Work and the invoice referred to in (b) above shall not cover such Repertoire Work.
 - (d) Where any Musical Work is not a Repertoire Work, it shall be the responsibility of the Licensee to obtain permission for its use from the person owning or controlling the copyright in that Musical Work.

3. Conditions Of Licence

- 3.1 No licence is granted hereunder in respect of any Products until MCPS has received payment in full of the Royalty Fee from the Licensee.
- 3.2 Any licence granted under these terms and conditions applies only for the manufacture of the Product for distribution when offered for sale together with a greeting card.
- 3.3 Where Musical Works are incorporated into General Interest Products, any licence granted hereunder shall only apply to such audio-visual material where it consists of:
 - (i) Product which comprises material, a substantial part of which has been previously licensed for broadcast on television in the United Kingdom or elsewhere in the world (whether or not actually broadcast); or
 - (ii) Product made for children; or
 - (iii) Product relating to fitness; or
 - (iv) Product relating to sport; or
 - (v) use only of production music in any Product; or
 - (vi) use of Repertoire Works as background music in interviews with recording artists and/or composers who are associated with that music (without prejudice to the restriction that music cannot be the primary feature of the Product and must be merely secondary or incidental to other material that is featured); or
 - (iv) use of Repertoire Works within promotional music videos and live music concert footage (without prejudice to the restriction that music cannot be the primary feature of the Product and must be merely secondary or incidental to other material that is featured).
- 3.4 Where Musical Works are reproduced in Audio-Visual Music Products, any licence granted hereunder shall only apply to such audio-visual material where it consists of either:
 - (i) pop promo videos; or
 - (ii) live performances and concert footage; or
 - (iii) photographs or other still images relating to the relevant artists or composers; or
 - (iv) interviews with artists, composers and producers or other persons involved in the creation, performance or production or the music used.
- 3.5 No licence shall be granted in respect of Product containing more than 20 tracks.
- 3.6 No single Product shall contain more than two recordings from the same artist, author or composer of Repertoire Works which are less than fifteen years old without the prior approval of the copyright owner.
- 3.7 No single Product shall contain more than five recordings from the same artist, author or composer of Repertoire Works which are more than fifteen years old.

4. Restrictions

4.1 The Licensee shall provide to MCPS, upon request, a copy of any Product. The Licensee will deliver this to MCPS within 7 days of a request (or within 7 days of the pressing of the Product).

4.3 All Products licensed under these terms and conditions must bear:

- (i) the capitalised initials MCPS; and
- (ii) a notice to the following effect:

“ALL RIGHTS OF THE PRODUCER AND OF THE OWNER OF THE MUSICAL WORKS REPRODUCED ARE RESERVED. UNAUTHORISED COPYING, HIRING, LENDING, PUBLIC PERFORMANCE AND COMMUNICATION TO THE PUBLIC OF THIS DISC PROHIBITED.”

These requirements must be displayed together, without separation, and placed on the label of the Product (as opposed to any packaging sleeve in which the Product is provided).

4.3 Any licence granted under these terms and conditions will not cover the following (for which either a separate licence and/or the approval of the relevant copyright owner(s) would be required):

- (a) incorporation of Repertoire Works into advertising or sponsorship of whatsoever nature or use of a Repertoire Work in such a way that a reasonable person might associate the Repertoire Work with the advertising or sponsorship. For the avoidance of doubt this exclusion also prohibits the use of any Repertoire Work in any advertisement for a Product. This restriction extends to any branding that is not of the publication, owners of the sound recording or copyright owners of the Musical Works.
- (b) any ‘premium’ use of a Product, which for the purposes of these terms and conditions means any use (or supply with the express or implied authority to sell for use) of a Product as an incentive to purchase or acquire other goods or services of whatsoever nature or to encourage brand awareness and/or loyalty.
- (c) the copyright in any sound recording.
- (d) any distribution of a Product in a non-physical format (which, for the avoidance of doubt, includes any form of online or mobile distribution of the Product (or any part thereof) or any clips of music).
- (e) any distribution of a Product other than by being sold together with a greeting card.
- (f) the recording of any Repertoire Work in the form of any type of arrangement (including, for the avoidance of doubt, in the form of a combination of two or more Repertoire Works) or adaptation of whatsoever nature.
- (g) parodies and burlesques of any Repertoire Work, composer or writer or any artist associated with the work, or any derogatory or defamatory images or references thereto.
- (h) any arrangements or adaptations (including using music with lyrics which were not written for use with that music and vice versa) or the sampling of

Repertoire Works unless this has been authorised by the copyright owner(s).

- (i) the use of any Repertoire Work in such a way that the Licensee ought reasonably to consider as being insulting or detrimental to the composer, member or to the artist performing the Repertoire Work.
- (j) the use of any political, religious, sexual or drug-related visual image in connection with any Repertoire Work, unless this is a direct pictorial image of the lyrics of that work.
- (k) the use of any Repertoire Work in a way that implies approval or endorsement by the composer, writer or any artist associated with the work.
- (l) the public performance, broadcasting or other communication to the public of Repertoire Works.
- (m) the graphical depiction of lyrics, whether on screen or in a booklet (for the avoidance of doubt, this includes any karaoke material).
- (n) any other rights not specifically granted under these terms and conditions.

4.4 The moral rights of the composers of Repertoire Works are unaffected by these terms and conditions.

5. Royalty Fees

5.1 In consideration of MCPS granting the licences set out in clause 1 above, the Licensee will pay MCPS the Royalty Fee, which shall be calculated per unit as follows:

Format	Royalty Rate
Audio Only Music Product:	8.5% x 50% of Dealer Price
Audio Visual Music Product:	6.25% x 50% of Dealer Price
General Interest Audio Visual Product:	8.5% x 50% of Dealer Price x relevant Product duration*

* Where relevant product duration is calculated as total music duration/total product duration.

The royalty fee will be multiplied by the number of units manufactured and distributed, as specified in the AFL.

5.2 The rates are exclusive of VAT, which shall be payable upon the Royalty Fee.

5.3 Where a Product reproduces Repertoire Works together with Musical Works which are not Repertoire Works, the Royalty Fee referred to in clause 5.1 above shall be adjusted in the proportion which the total duration of each of the Repertoire Works bears to the total duration of all the Musical Works on the Product in question.

6. Invoicing and Payment

- 6.1 The Licensee shall pay all invoices issued by MCPS under these terms and conditions in full by electronic bank transfer or direct debit within 7 days of the date of issue.
- 6.2 Without prejudice to any other right or remedy of the Licensors, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid by the due date (or the date on which such fees should ordinarily have been paid in circumstances where the Licensors have been unable to submit an invoice) due to default of the Licensee, the Licensee shall (if required by the Licensors) pay interest on such late payment calculated on a daily basis at an annual rate of 3% over the base rate, current from time to time, of National Westminster Bank Plc payable from the date on which the payment would have been made to the date on which the payment was made.

7. Termination

- 7.1 Either party shall have the right to terminate any licence granted under these terms and conditions immediately by written notice to the other party if:
 - (a) the other commits a material breach of these terms and conditions which is not capable of remedy; or
 - (b) the other commits a material breach of these terms and conditions which is capable of remedy but which has not been so remedied within 14 days of notice thereof; or
 - (c) the other goes into receivership or any resolution is passed for its winding-up or liquidation (other than for the purposes of reconstruction or amalgamation) or is otherwise unable to pay its debts.
- 7.2 Where MCPS has terminated a licence granted under these terms and conditions in accordance with clause 7.1, the Licensee shall immediately cease to manufacture or distribute any and all Product. All units of the Product that remain in the possession or control of the Licensee shall be deemed unlicensed and must immediately be destroyed by the Licensee.

8. Miscellaneous

- 8.1 Any licence granted under these terms and conditions is personal and the Licensee shall not assign, sub-license, sub-contract or otherwise transfer any of its rights or obligations under these terms and conditions in whole or in part without the prior written consent of MCPS, except as set out in clause 1.2 above.
- 8.2 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.
- 8.3 If these terms and conditions create any rights which would in the absence of this provision be enforceable by any person not a party to these terms and conditions, such rights shall not be enforceable.

8.4 These terms and conditions shall be construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.



AP7A APPLICATION FOR LICENCE (AFL)

THIS AFL MAY BE USED FOR: Audio Only and Audio Visual Products Affixed to Greetings Cards

APPLICANT ADDRESS	DAYTIME TELEPHONE	FAX	MCPS USE ONLY
PRODUCT TITLE	CONTACT NAME	EMAIL	

1) Type Of Product	
<small>MCPS USE ONLY</small>	
<small>(Please tick one of the boxes below. For definitions of Music & General Interest products please refer to the applicable MCPS terms & conditions.)</small>	
AUDIO ONLY	<input type="checkbox"/> (or)
AUDIO VISUAL MUSIC	<input type="checkbox"/> (or)
AUDIO VISUAL GENERAL INTEREST	<input type="checkbox"/> (or)
2) General Interest Information Only	
Commissioned Music (applies to Audio Visual General Interest only)	
Yes <input type="checkbox"/> No <input type="checkbox"/>	
SPECIAL FEATURES	
SPECIAL FEATURES RUNNING TIME	
FULL PRODUCT RUNNING TIME	
DOES THE SPECIAL FEATURE CONTAIN MUSIC? <small>(applies to General Interest Covermounts: GI7 and GI7n only)</small>	
Yes <input type="checkbox"/> No <input type="checkbox"/>	

3) Product Information	
<small>MCPS USE ONLY</small>	
CATALOGUE NO	
ITEMS	<input type="checkbox"/> One Item Set of <input type="checkbox"/>
FORMAT	<input type="checkbox"/> 12" vinyl <input type="checkbox"/> 7" vinyl <input type="checkbox"/> 5" CD <input type="checkbox"/> Cassette <input type="checkbox"/> Other (specify) <input type="checkbox"/> DVD
NO. OF TRACKS	
1) IS THERE ANY THIRD PARTY ASSOCIATION INCORPORATED ON THE BODY OF THE DISC OR PACKAGING, INCLUDING (BUT NOT LIMITED TO) SPONSORSHIP, ADVERTISING, BRANDING, ETC?	
Yes <input type="checkbox"/> No <input type="checkbox"/>	
2) WILL THE MUSIC ON THE PRODUCT BE REVIEWED IN THE PUBLICATION? <small>(applies to Music Covermounts: AP7 and AP7n only)</small>	
Yes <input type="checkbox"/> No <input type="checkbox"/>	
3) HAS PERMISSION BEEN OBTAINED FOR THE USE OF THE SOUND RECORDINGS?	
Yes <input type="checkbox"/> No <input type="checkbox"/>	

4) Manufacturing Information	
<small>MCPS USE ONLY</small>	
MANUFACTURER:	
ADDRESS	
TELEPHONE NO.	
GROSS QUANTITY TO BE MANUFACTURED:	
DEALER PRICE	
REGION(S) OF DISTRIBUTION	

Any licence granted by MCPS following submission of this AFL shall be strictly subject to the applicable AP7A terms & conditions:

SIGNED _____ NAME _____ COMPANY _____ DATE _____
 by an authorised signatory of the applicant company

