

## Standard Distribution Principles for MLCs

### Annex 3

## Guidance on the implementation of public performance distribution

October 2020

This guidance refers to point 5. **Public performance** of the Standard Distribution Principles for MLCs concerning the distribution of revenues for public performance. For the avoidance of doubt the guidance does not concern the distribution of revenues for *reproduction* of sound recordings for the purpose of subsequent use in public performance (dubbing for public performance).

The guidance is based on identified good practices of MLCs and will be updated from time to time as technology and practices develop over time.

The approach to the distribution of public performance monies shall follow the guidance set out in this paper, taking into account a number of factors including the size of the market, scope of mandate, nature of rights, relationship with users and availability and quality of usage information. MLCs shall continuously work towards improvement of accuracy of the distribution of public performance revenues.

### DEFINITIONS

The definitions provided in this paper shall be used for the purposes of implementation of the guidance for public performance distribution and related market research and analysis.

**Panel** – usage data from a subset of users in a sector, combined to create a representative set of usage data used to distribute revenue (funds) collected from users in that sector more generally. Recourse to a panel is appropriate when a combination of usage data, is a cost-effective way to improve the accuracy of distributions in a given sector.

**Pool** – amalgamated revenues paid by users with similar, usually small, licence value and/or similar usage patterns. Combining revenues collected from a set of users into a pool is appropriate when the revenues relate to usage that is sufficiently similar, and when by combining the processing meaningful efficiencies are achieved.

**Proxy** – usage data from another sector/area which can justifiably be used to distribute revenues collected from a separate usage sector. Recourse to a proxy is appropriate when

no feasible source of accurate usage data directly related to the particular sector is reasonably available.

**Sampling** – employed where the usage information does not cover the whole time period of use or does not cover all the licensed users in a pool. Sampling can be done on particular days or times for a small number of user sources and can use ACR or playlists employed for a portion of the overall uses. The use of sampling is appropriate when comprehensive usage logs could not be obtained in an economically feasible manner and when the samples are sufficiently robust to model the overall usage, or to prove/calibrate a model.

**Statistically representative sample** – a sample chosen/selected from a larger group of users or time windows for a defined segment that accurately reflects the characteristics of the overall usage (as opposed to a random sample which is a group or set chosen from a larger number of users in a random manner). Whenever sampling is used, the aim should be to ensure that the sampling is statistically representative, i.e. should not be skewed by an inappropriate choice of venues or time period selected in the sample.

## **DISTRIBUTION POLICY AND GENERAL PRINCIPLE**

MLCs' general distribution policy should include and follow the principle that revenues shall be distributed based on actual use and usage reports. Given the importance of usage reports to MLCs, it is expected that the provision of logs will be required as part of the licensing arrangements generally and shall be processed insofar as is economically feasible.

Not all public performance users are able to provide usage reports. Sometimes usage reports are not available at all for the licensees in a segment. In such cases, MLCs must aim to develop policies for distribution of public performance revenues based on market research and analysis and objective criteria. The analysis will inform which mix of the following potential sources are most suited for obtaining information on the actual use and/or determining relevant proxies:

1. reports from users (using statistically representative samples where relevant),
2. reports from automated content recognition (ACR) service providers,
3. reports from background music providers (on what has been copied and ideally playout data), and
4. radio reports.

TV reports will of course be used to distribute TV revenue when these reports are of sufficient quality however the use of TV reports as proxies is generally to be avoided on account of low quality of the reports and lack of representative information with respect to other areas of administration. Scenarios in which it may be appropriate to consider using TV logs include where TV has been confirmed as being the source of music use as established in the course of licensing or inspection activities or research.

The selection of the usage reports must reflect actual use of recordings as closely as possible. If required, different weighting based on objectively justifiable criteria may be applied. The appropriateness of the potential sources and usage reports shall be regularly reviewed and reassessed when necessary.

Only high-quality reports reflecting actual use may be selected as proxies for statistically representative samples or for the panels.

## **LONG TERM PLANNING AND DEVELOPMENT**

MLCs must aim to continually improve the accuracy (as close to actual usage as possible) and efficiency (cost-effectiveness and timeliness) of the process and construct a strategy and policies to manage the distribution over multiple future years. Questions that need to be continually asked as an MLC carries out and analyses the results of distribution include:

- How accurate is current distribution?
- Are panels and proxies valid, i.e. are they statistically representative?
- Which areas of usage can be encouraged to provide reports in the future?
- Which existing usage reports are adequate and accurate?
- Are the pools currently used reasonable? Are they a statistically representative reflection of actual use?
- How to prioritise addressing distribution in the areas/segments where usage information is missing?
- Can long-term partnerships be established that will reduce the costs of surveys/reporting, and with whom?
- Where is investment in surveys and data most likely to have a long-term positive effect on accuracy?

This will generally result in MLC management devising a plan with documented recommendations for approval at the General Assembly or Board and which will establish the general approach to be taken by the MLC and will thus form part of the distribution policy going forward.

## **RESEARCH AND ANALYSIS**

MLCs shall carry out research to establish what information and data is in place, what is missing and where additional input is required to ensure that public performance revenue is distributed as closely to the actual use as possible.

The initial high-level market research would enable an understanding of which sources of information are available which define the recordings that are used and the patterns of music usage in different segments of the public performance market e.g. clubs, discotheques, restaurants, bars and any other relevant segment. The high-level assessment will identify:

1. the areas and segments where satisfactory information and reporting is in place,
2. areas and segments where additional information and reporting is needed, and
3. areas where focused market studies are needed to obtain the information required to ensure accurate distribution

Focused market studies may provide information as to whether users in respective areas and segments can be encouraged to report (at least the source of music) or what models can be used to ensure that revenues are distributed accurately, if reports are not reasonably available or it is not economically reasonable to process usage information. The approach will be different between the areas and segments where music is a main feature and background music.

The research should be carried out on a regular and recurring basis, for example, every two or, maximum, three years to capture evolution in the market. Substantive changes in the market may also require immediate or more frequent research and analysis.

## **DETERMINING THE SOURCES OF MUSIC USED**

Understanding of the sources of music used, allows the MLCs group or cluster users that use the same or similar sources of music, and is helpful in constructing and assessing proxies. At this stage of the research process the MLC would determine what is happening in the market and what data is available to use for distribution. Questions that need to be asked would include:

- What is the source of music used by businesses – do users principally use *streaming-for-business* solutions, radio, webcasts, CDs, any other sources?
- Is music supplied/delivered by background music suppliers?
- Are playlists created by DJs/dance venues themselves?
- What specific radio channels, playlists, webcasts etc are used?
  - Identified by user e.g. provided for in the licence, on self-registration/self-certification or by MLC e.g. market information (licensing team, field staff, call centre and others)?
- Is it possible to use/get access to usage logs from those sources?

- Radio: playlists (radio is still widely used as a source for background music, e.g., offices, workplaces)
- Background music service providers, including streaming for business solutions: usage logs or list of tracks supplied
- Can it be matched/linked to licensed venues?
  - Selected users (DJs/dance clubs etc): usage logs
  - Webcasters: playlists/usage logs
- What is the quality of available playlists and usage logs?
  - Only high-quality reports may be selected
- Is it required to process the logs for distribution of public performance revenue, or would the logs have to be initially processed to distribute the associated revenue, e.g. radio, reproduction, webcasting etc?
- Can any specific genres be identified? Are specific genres used that can aid with categorisation against other accessible logs?
  - Identified by user e.g. provided for in the licence, on self-registration/self-certification or by MLC e.g. market information (licensing team, field staff, call centre etc)?
  - It should be recognised that it may be difficult for users at the start of the licence period to anticipate the music that they will use through the coming period; this only emphasises the need to carry out routine studies.
- Is the music used during peak and off-peak business hours, e.g. hours, days of the week, different?

## **LISTING, ASSESSING AND CATEGORISING THE TYPES OF VENUES**

The purpose of this stage of the process is to construct categories which will form the basis of revenue fund pools, e.g. restaurants; hotels; retail chains; discos and night clubs, gym chains etc.

- Is the venue a featured music or background music user?
- What is the business type, size, location, numbers, and revenues in each group?
- If necessary, the venues can be categorised per size
  - tariff structure can be one of criteria.

- Per the definition of “pool” (see Definitions) it is not normally acceptable to combine revenue from the areas where the music usage has different characteristics.

## **CATEGORISING THE VENUES**

The venues can be categorised in the following groups based on the segment, size, availability of usage information and economic feasibility:

### **1. Users which report actual usage information and it is economically feasible to distribute funds**

- Distribute on the basis of the usage reports from individual customers

Note: Economic feasibility will depend on the quality of reports, usage, repertoire, size of the market and the MLC and other factors.

### **2. Users which can report usage information, but it is not economically feasible to distribute funds**

- See the section **Clustering similar venues**
- How substantial are distributable funds? (see the section Economic Feasibility)? Can anything be done to make it feasible, e.g. can the reports and data be improved to make their use feasible?

### **3. Large scale users which do not report, but there are substantial revenues to distribute**

- Investigate whether and how it would be possible to obtain usage logs or information on the source of music, or if that is not feasible;
  - See the section **Determining the sources of music used**
- Distribute based on proxies (i.e. radio, background music service providers or others if relevant) where appropriate proxies are available, and if unallocated revenues still remain:
  - consider surveying the use of music at the point on licensing, or inspect premises using in-house or outsourced resources to obtain good understanding of music usage, and/or
  - consider deploying ACR:
    - to obtain logs to use distributing the revenue paid by respective users, or
    - to get sufficient understanding of the used music to serve as a basis for selection of a proxy for distribution of respective revenues.

#### 4. Small scale users without usage information

- See the section **Clustering similar venues**

#### 5. Users who can provide usage logs

- assess the extent to which these logs can be used as a proxy to distribute the revenues collected from users which have a similar music source and music usage characteristics.

### CLUSTERING SIMILAR VENUES

Clustering of similar venues enables MLCs to survey subsets of customers, and to, among other things, establish where proxies or statistically representative samples can be used to distribute revenues, or to inform the MLCs about the best approach to surveying the market, market survey tools and methodology to boost the understanding.

Unless the MLCs have professional staff and adequate resources in-house to design the clustering processes, it is recommended to seek expert advice on market research, data collection and analysis methods, survey questions etc, even if MLCs do not intend to commission a third party to carry out the research.

#### 1. Clustering featured music venues:

- ***Typologies / clusters:***
  - Identify groupings of licensees, e.g. business types, size, location,
  - Determine number of businesses in each group,
  - Calculate/take into account the revenues from each group
- ***Determine information available or possible and the cost basis:***
  - ACR (including existing deployments and costs)
  - Existing market surveys and data
  - Data from licensees on genres, opening hours, featured performers, e.g. DJs, periods when broadcast is used
- ***Considering ACR feasibility/deployment:***
  - Plan for a focused sampling-based approach, as wide scale ACR deployment in venues is expensive, and it needs to be used wisely
  - Determine characteristics of each venue (size, genres, location, number of hours open) and cluster venues according to useful characteristics,
  - For each cluster, determine ACR coverage required – what number/percent of venues will be a representative sample?

- Based on the cost analysis, deploy ACR across sample of venues, if economically feasible.
- **Considering carrying out market surveys:**
  - How many venue clusters remain uncovered by ACR? How much do they contribute? How complex is their music use?
  - Establish whether ACR reports from similar clusters are a reasonable proxy and match venues to proxy types, or
  - Consider survey of licensees if the reports from similar clusters are not a reasonable proxy,
  - Consider whether survey will be carried in-house through phone calls / visits / own survey or look at research agency to handle:
    - If surveying licensees is:
      - cost effective – manage survey to determine distribution,
      - not cost effective – use outcome of ACR reports or pro-rata approach to distribute the revenues in question.

## 2. Clustering background music venues:

- **Develop questionnaire for current and new licensees** to determine business type and music use e.g. size of business, source(s) of music, genres and other relevant information. Are there distinct geographical regions with unique patterns of music usage?
- **Typologies / clusters**
  - Identify groupings of licensees e.g. business types, size, location
  - Determine number of businesses in each group
  - Calculate/take into account the revenues from each group
- **Determine information available or possible and cost basis:**
  - Usage reports (of any kind, automated or manual)
  - Background music suppliers' usage reports
  - ACR (including existing deployments and costs)
  - Existing market surveys and data
- **Considering using available usage reports and proxies:**
  - Employ existing usage reports and/or reports from radio broadcasters and background music service providers as proxies for distribution if the reports are of good quality to use for cost effective distribution



- **Considering deployment of ACR, in case it might be feasible:**
  - Consider how many licensees are not covered by usage reports
  - If there are no available usage reports or proxies, consider if ACR is suitable for licensee/user type and whether ACR is cost-effective for the type? ACR is still generally difficult in respect of most background music venues.
  - If suitable and cost effective, investigate ACR deployment across a sample of licensees. This approach is most effective when there is no existing reporting, little clarity on music use and when licensee closely represents type. Determine statistically representative number of licensees required to install/deploy ACR.
  
- **Considering sampling**
  - If ACR is not suitable and cost effective and there are no usage reports that can be used as proxies, assess characteristics of licensees not covered by any usage reports. How many remain? What is the value of these in the corresponding group? How much do they contribute? How complex is their music use?
  - Match respective licensees to representative proxies;
  - If usage reports from similar licensees cannot be used as proxies for usage, consider market research to survey licensees and the cost. Sample should be representative of licensees (types, location, genres, etc):
    - If economically feasible, manage survey to determine distribution,
    - If not economically feasible, use pro-rated distribution or find best efforts proxy.

## **INFORMING THE POOLING OF USERS/REVENUE**

Pooling users and revenue (funds) is applicable when it is not economically feasible or possible to distribute individual funds. Factors to consider for clustering include:

- information on type of music used, genre, geographical region, size of the business, information provided from the licensing/field staff, opening hours, periods when broadcast is used, sample logs (including from DJs),
- Cluster venues whose parameters are similar,
- Assess which venues and sources represent other venues?

However, there might in certain specific circumstances be other factors outside of economic feasibility that a MLC would have to consider based on the need to ensure distribution to right holders of linguistically or culturally specific music.

## ECONOMIC FEASIBILITY

Accurate distribution reflecting actual use as closely as possible is essential, however it would be unjustified to spend a disproportionate share of revenues to ensure absolute accuracy. Therefore, in determining appropriate solutions for distribution of public performance revenues, it is important to assess the economic feasibility with regard to both short term and long-term policies and solutions.

Some of the factors in favour of economic feasibility that MLCs should consider include:

- The costs of the measures taken to reduce the volume of unidentified usage are proportionate in relation to their intended objective.
- The proposed approach enables automation of data processing or business processes.
- Risk of reputational damage if we do not attempt to distribute public performance revenue as closely to the actual use as possible.
- Opportunities to partner with other right holders or businesses to share costs.
- Availability of relatively low-cost methods and/or market research that would be 'good enough' and represent an improvement on existing situation.

Some of the factors against economic feasibility that the MLCs should consider include:

- Poor repertoire and usage data.
- Poor cost / accuracy ratio, and involvement of significant manual work.
- No relevance of the measures to larger group of users / sectors. When considering the ACR solutions MLCs shall assess the cost of monitoring measured against the cost of getting and processing usage reports and consider how it impacts the accuracy of distribution.

MLCs should undertake an overall analysis of total costs (fixed and variable) versus benefits, to determine whether the project or activity should be undertaken or not. The best practices vary by sector and implementation will depend on the size of the market and MLC, but generally the elements of cost assessment and establishing the economic feasibility would include:

- Total cost of distribution (fixed and variable) per revenue stream/per value distributed,
- Cost of processing usage report as a percentage of the value to be distributed per the report,

- Cost of resources required to prepare, and operate a separate distribution as a percentage of revenue stream/paid out revenues,
- The cost of establishing and maintaining survey data, statistically representative samples and proxies as a percentage of distributable value,
- Cost per playlist/amount distributed.

The cost analysis of more accurate distribution should be included in MLCs' long-term cost strategy, i.e. it is not and should not be considered as a one-off investment. The costs included in the analysis should include all relevant costs, such as collecting data from existing licensees (in-house or third party), surveying the market (in-house or third party) and analysis of results (in-house or third party), methods of market research, acquiring existing market surveys, deployment of ACR, processing and analysis of usage reports, cost of distribution, resources required, systems and others.

Cost minimisation strategies would include creating pools, panels, statistical surveys, using established profiles, using ACR on a sample basis, data quality (including repertoire data) quality and management practices, use and promotion of ISRC, standardisation of user reports, cooperating with other CMOs in the market managing other rights for the same use and interested in receiving the same information and other strategies.

Whatever measures are used to deal with the categories they should be objective, transparent and able to be reported clearly to right holders.

Consideration of economic feasibility should be taken into account regarding all the subject matter of this guidance.

## **PLANNING FOR IMPLEMENTATION OF THE DISTRIBUTION**

The method for preparing public performance funds for distribution shall be set out within the MLC's distribution rules.

The purpose is to adapt the existing longer-term plans to the needs of the imminent distribution. Where market studies corroborate that the existing practice is accurate this will raise confidence in the distribution, but any areas where deficiencies are found would need to be addressed urgently.

## **IMPLEMENTING DISTRIBUTION**

The purpose is to carry out the actual distribution using the information gathered for the purpose, in context of the actual funds, logs, pools and panels. Good long-term planning will mean that the procedures for the distribution and the data required for the distribution will all be in place.

The distribution team should operate according to a clear agreed plan, which describes how all the funds will be processed and which data will be used to process them.

This phase links the results of the market research/analysis and existing usage information to set up funds/pools and establish panels/proxies, configure distribution parameters, and operate the distribution.

Reporting to right holders is the element of the distribution process that will assist the post-distribution analysis and drive continuous improvement of the MLCs processes.