

# Code of Conduct for Music Industry Music Licensing Companies (“MLCs”)

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## INTRODUCTION

It is acknowledged that MLCs provide a range of valuable services both to right holders and for users. MLCs make it easier for potential users to use sound recordings legally and they streamline the process of collecting remuneration and/or licence fees for the use thereof.

By striving to adhere to the guidelines set out in this IFPI MLC Code of Conduct, each MLC aspires to achieve best practices in the conduct of its operations. It is however understood that some new and recently established MLCs may not at the outset comply with all elements of the Code, and that in such cases MLCs, in the absence of regulatory obstacles, will work to ensure compliance within a reasonable timeframe.

This Code, which has been agreed among the MLCs, aims also to build trust in and among MLCs. MLCs expect that, in return to striving to adhere to this Code, users behave in a responsible manner, respect the right holders’ right to receive fair payment for the use of their sound recordings, and pay remuneration and report usage to MLCs accurately and in a timely manner.

It is also understood and accepted that actions taken by any MLC which are necessary in order to comply with national laws or other binding regulations shall, where such provisions conflict with any provision of these guidelines, not be considered as departing from these guidelines.

It is further understood that as a codification of good industry practices in the specific area of collective management of sound recordings rights, the Code is likely to exceed in many respects the minimum standards national laws or regulations may impose on collective rights management organisations (CMOs). As this voluntary industry Code does not substitute binding national laws, regulations or codes, any potential non-compliance with this Code does not imply non-compliance with such national rules.

## GENERAL PRINCIPLES

MLCs shall act in the best interests of all the right holders they represent, whether directly or via agreements with other MLCs. MLCs shall offer their services and conduct their operations in a fair, effective and non-discriminatory manner and in compliance with the applicable legislation. MLCs shall strive to effectively collect remuneration or license fees on behalf of right holders and distribute the collective revenue to the correct right holders expeditiously and accurately. MLCs shall strive to continuously improve their performance e.g. by applying industry best practices and measuring their performance using industry standard performance indicators.

## **I. RELATIONS WITH RIGHT HOLDERS**

1. Each MLC is to allow right holders to determine the scope (rights, uses, repertoire and territory) and character (exclusive or non-exclusive) of the rights mandates they give to the MLC without restrictions, unless such restrictions are imposed by applicable legislation, competent courts or other authorities, or they are objectively justified for reasons of effective management and licensing of rights, and they are always proportionate to the objectives they seek to achieve.
2. Each MLC is to allow right holders to terminate the management of their rights wholly or in part (see clause I.1 above) with a reasonable notice period that shall not exceed six months. However, MLCs may provide that termination of membership takes effect at the end of the financial year during which the notice of termination was given. Regardless of termination of the rights mandates, the MLC shall continue to distribute to right holders' revenue they have collected on their behalf prior to termination, on equal terms with the MLC's members or customers, whichever may apply. In appropriate circumstances, the MLC may require that right holders' rights continue to be included in licenses granted to users prior to the date of the receipt of the notice of termination for a reasonable period of time, however, such a period shall not exceed 12 months.
3. Each MLC is to keep and maintain up-to-date records of the members and/or right holders it represents in electronic form, in compliance with applicable laws on data protection and privacy.
4. Each MLC is to accept as members and/or provide services to all sound recording right holders on a non-discriminatory basis and according to principles of equal treatment, unless the MLC has objectively justified reasons to refuse its services or differentiation is absolutely necessary and based on justified and objective criteria (for example, where an applicant/member is proven to be engaging in piracy or other illegal practices or where an applicant/member manages rights in sound recordings that are of a type that does not fall within the MLC's scope of activity (such as, for example, library music or jingles)).

## **II. RELATIONS WITH OTHER MLCs**

1. Each MLC is to strive to conclude reciprocal representation agreements with respect to the rights they administer with every other MLC, subject to such other MLCs complying with this Code and any requirements of international law, in order to establish a network of agreements between the MLCs that facilitates multi-repertoire and in appropriate cases multi-territory rights licensing.
2. Each MLC is to manage the rights it is mandated to administer by virtue of a reciprocal representation agreement in a transparent and non-discriminatory manner.

## **III. RELATIONS WITH USERS**

1. Each MLC is to interact with users in a fair and non-discriminatory manner and in a way that ensures that right holders receive a fair price for the use of their rights.
2. Each MLC is to establish tariffs that are transparent and based on objective criteria and that fairly reflect both the value of right holders' rights in trade and the benefits to users of the MLC's service.
3. Each MLC is to require users to report the use of all sound recordings promptly and accurately using a standardised electronic format and where possible using industry standard recording identifiers, unless reporting would be commercially unreasonable and economically unviable considering in particular the value of the license in question.
4. Each MLC is to be able to provide detailed information within a reasonable timeframe on the repertoire

and rights they represent, following a justified and sufficiently detailed request from a licensee or entity engaged in license negotiations.

5. With a view to increasing efficiency and reducing costs MLCs should examine opportunities for cooperation with other CMOs representing complementary rights, e.g., with respect to the licensing of rights in sound recordings and musical works for the public performance of recorded music.

#### **IV. TRANSPARENCY**

1. In order to ensure transparency in particular of the MLCs' services to right holders, regardless of their nationality or country of establishment, each MLC is to make available, in English, on their websites: their annual reports and accounts, list of bi-lateral agreements they have concluded, template membership and/or customer agreements with right holders, general tariffs, articles of association/by-laws and distribution rules.
2. Each MLC is to make available upon request, to all right holders that have mandated the MLC either directly or through a bi-lateral agreement with another MLC to manage their rights, a list of recordings where the owner of the relevant rights has not been identified. Before providing this information, each MLC should first have concluded reasonable identification procedures.
3. Each MLC is to provide to the right holders they represent and to other MLCs with which they have bilateral agreements, royalty statements itemised per track and in respect of revenues at least per usage sector (such sectors may include commercial radio, commercial TV, cable retransmission, satellite broadcasting, public performance, etc.), subject, however, to paragraph V.2 below.
4. Each MLC is to establish and communicate a fair and effective policy for dealing with competing remuneration claims, and to publish a dispute resolution procedure(s).

#### **V. DISTRIBUTION AND MANAGEMENT OF REVENUE**

1. Each MLC is to encourage each right holder to put in place processes to provide, in a standardised electronic format, accurate, complete, and timely information on their rights, catalogue, and new recordings, including use of industry standard recording identifiers.
2. Each MLC is to strive to accurately identify the use of individual sound recordings in performance activities and to distribute monies to all right holders at track level based on actual use and usage reports insofar as it is economically reasonable. Distribution of revenue at track level, based on actual usage in respect of the licensed service to which the revenue relates (or an objectively justified group of licensed services taking into account the revenue received and the nature of the usage), should be the rule as regards to distribution of revenue for broadcasting activities. General public performance revenue can be distributed, in appropriate cases, using statistical samples, and on the basis of monitoring information, background music providers' reports, or using best available proxies, such as radio usage or relevant and objective market share information. However, as a principle, costs for using such alternative methods should be borne by licensees rather than right holders.
3. Each MLC is to distribute collected revenue no later than six months after the end of the financial year in which such revenue is collected, and either:
  - a. at least twice per year; or
  - b. at least once a year, in which case MLCs should pay advances to right holders subject to reasonable financial controls, ensuring that such advances do not exceed amounts right holders are actually due during the relevant period.

4. Each MLC is to deduct from the collected sums only the appropriate costs of operating the MLC. No additional deductions for whatever reason should be made unless the right holders have agreed to such deductions or they are stipulated by law. MLCs are to provide details of such deductions to members and indicate whether these are statutory or voluntary.
5. After having used their best efforts to identify and locate the correct recipients, unless prohibited by applicable legislation, each MLC is to distribute unidentified and unclaimed monies proportionately to the identified right holders, without discrimination between members and non-members, no later than three years after the end of the calendar year in which the monies were collected, according to usage information for that year. Each MLC is to make reasonable provisions against future claims by individual right holders that have not received remuneration for the use of their rights.
6. The distribution rules and practices applied by the MLC shall be based on the principle of individual distribution according to actual use of the sound recordings and they may not directly or indirectly discriminate between right holders on the grounds of nationality, ownership, genre, or otherwise, without objectively justifiable reasons.

## **VI. GOVERNANCE**

1. Unless prohibited by applicable legislation, each MLC is to provide right holders the opportunity for a fair and balanced representation in the governing bodies taking into account the direct economic interest a member has in the functioning of the MLC.
2. In the event that the right holders can become direct members of the MLC, all members should be given voting powers at the general meeting on the basis of criteria such as (i) number of tracks registered and/or (ii) amounts received or due to a member, provided that such criteria are determined and applied in a manner that is fair and proportionate to the value of their rights managed by the MLC.
3. Unless otherwise required by applicable law, each MLC shall hold a general meeting of members, delegates or shareholders, as the case may be, at least once a year. The general meeting shall at least have the power to appoint and dismiss the members of the board of directors, which supervises the management of the MLC, and the MLC's auditors, as well as approve any changes to the MLC's statutes and general distribution policies.