

VIDEO PERFORMANCE LIMITED

DISTRIBUTION RULES

This document sets out the rules applicable to the distribution of monies collected by VPL in respect of the licensing of the rights controlled by VPL in the United Kingdom.

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RULE ONE AIMS

- 1.1 The aims of VPL's Distribution Rules are to ensure that:
- (1) the licence fees collected by VPL are distributed and paid to Members fairly, efficiently, accurately, promptly and in a cost effective manner;
 - (2) the licence fees are allocated to Members fairly in accordance with the usage of their Music Videos; and
 - (3) VPL's distributions are in accordance with VPL's Articles of Association and VPL's contractual duties to its Members.

RULE TWO LIST OF DEFINITIONS

- 2.1 The following definitions are used in these Rules (including any Schedules to the Rules):

The 1988 Act	The Copyright, Designs and Patents Act 1988 or any relevant statutory modification or re-enactment of that statute for the time being in force.
The Board	The board of directors of VPL.
Corporate Group	A collection of Members who: <ol style="list-style-type: none">(1) are associated companies (whether incorporated in the United Kingdom or otherwise) within Section 416 of the Income and Corporation Taxes Act 1988 (as amended);(2) inform VPL that they wish to receive a collective payment from VPL; or(3) are classified as such by the Finance Committee as it shall determine to be reasonable in all the circumstances.
Distribution Committee	The committee duly appointed by the Board to administer certain aspects of the distribution of monies by VPL.
Exploitation Period	A period of time (such as a calendar year) in which a Music Video is used and in respect of which a distribution is (or will be) made by VPL.
Film	A recording on any medium from which a moving image may by any means be produced.

Finance Committee	The committee duly appointed by the Board to administer various financial aspects of VPL's business.
Fund	A collection of revenues received by VPL (whether from a single licensee or from multiple licensees) and from which appropriate deductions have been made.
Member	A person (whether an individual, company, partnership or otherwise) admitted to membership of VPL and whose name appears on the Register (or a person who at any material time has satisfied these conditions).
Music Video	A Film or extract from a Film made used or supplied at any time for the purposes of accompanying or being in any way associated with a discrete Musical Work.
Musical Work	A work consisting of music exclusive of any words or action intended to be sung spoken or performed with the music.
Net Distributable Revenue	The sum to be distributed to Members as expressed in the audited accounts of the Company in the relevant Exploitation Period.
Overpayment	A payment made by VPL (whether pursuant to these Rules or otherwise) that is in excess of the amount that should have been paid to the recipient.
Profile	Information regarding the usage of Music Videos.
Collective Management Organisation (CMO)	An organisation responsible for the collective administration of Music Videos in a territory outside the United Kingdom that enters into an agreement with VPL, under which the organisation appoints VPL as its agent to administer the UK Rights (or part of them) in Music Videos controlled by that organisation.
Register	The register of members to be kept under Section 352 of the Companies Act 1985 (as amended by the Companies Act 1989 or Section 113 of the Companies Act 2006 and including any statutory modification or re-enactment thereof for the time being in force).

Reserve Fund	An amount of money deducted from revenues in accordance with Rule 8.1.
UK Rights	All of the various rights under the 1988 Act that VPL may administer on behalf of some or all of the Members from time to time in respect of Music Videos (in respect of acts taking place in the United Kingdom, the Channel Islands, the Isle of Man and all additional territories to which the 1988 Act shall extend).
Working Day	Any day of the week (Monday to Friday inclusive) which is not a public holiday.

- 2.2 For the purposes of these Rules only, a CMO shall be treated as a Member, save that allocations to individual Music Videos will be on the basis of the individual rightsholders represented by that CMO.

RULE THREE QUALIFICATION OF MUSIC VIDEOS

- 3.1 Allocations and payments will only be made in respect of a Music Video where in accordance with Schedule 1:
- (1) that Music Video is deemed to qualify for copyright protection in respect of the UK Rights at the time that those rights were exercised; and
 - (2) VPL controls the UK Rights in that Music Video.
- 3.2 Allocations and payments shall only be made pursuant to Rule 3.1 in respect of a particular Music Video and a particular Member (or CMO) to the extent that the relevant part of the UK Rights is controlled by VPL on behalf of that Member (or CMO).

RULE FOUR THE DISTRIBUTION SCHEME

- 4.1 Distributions of Net Distributable Revenue shall be made in accordance with the following procedure:
- (1) VPL's revenues and costs for the relevant Exploitation Period are independently audited.
 - (2) The audited operating costs are allocated to revenue streams (and similar revenue streams may be combined for these purposes) and Funds are created from revenue streams or combinations of revenue streams to be used to pay the relevant Members (see Rule 5 and Rule 6).

- (3) Usage information is applied to particular Funds in order to calculate the monies allocated to particular Music Videos (see Rule 7).
- (4) Reserve Funds will be deducted at VPL's discretion (see Rule 8).
- (5) The resulting monies shall be allocated to Music Videos and then divided between Members (see Rule 9).
- (6) The total amounts allocated to the accounts of individual Members are distributed to those Members or those entitled to receive payments on their behalf (see Rule 10).

RULE FIVE COSTS ALLOCATION

- 5.1 Revenues received by VPL in respect of a particular Exploitation Period shall be divided into revenue streams for that Exploitation Period (and, for the avoidance of doubt, similar revenue streams may be combined for the allocation of costs).
- 5.2 The costs of collecting revenue attributable to a revenue stream shall be taken from that revenue stream, save where VPL determines that it would be reasonable in all the circumstances for such costs (or part of such costs) to be allocated between more than one revenue stream.
- 5.3 Corporate, administration and other costs shall be divided between the revenue streams in such proportions as are determined by VPL to be reasonable in all the circumstances.
- 5.4 In making any costs allocations under Rule 5.2 and Rule 5.3, VPL shall exercise its discretion as to whether:
 - (1) costs should be attributed to:
 - (a) the Exploitation Period in which the activity or event relating to those costs took place,
 - (b) any different Exploitation Period in which the liability to pay those costs was incurred or
 - (c) any different Exploitation Period in which those costs were paid by VPL; and/or

Example: Costs may be incurred in a particular Exploitation Period in recovering licence fees from a copyright user but the licence fees may be for a different Exploitation Period.

- (2) any costs should be apportioned between different Exploitation Periods (including Exploitation Periods in which the activity or event relating to those costs did not take place and in which VPL neither incurred the liability to pay those costs or satisfied that liability).

Example: Costs may be incurred and paid in negotiating a new licence or tariff, the benefits of which will apply for several Exploitation Periods (and not just the Exploitation Period in which the negotiations took place).

- 5.5 The costs allocations made by VPL pursuant to Rule 5.1 and Rule 5.2 shall be reviewed by an external auditor and confirmed by the Finance Committee in respect of each Exploitation Period.

RULE SIX FUNDS

- 6.1 Interest accrued by VPL on monies collected in respect of the exercise of the UK Rights shall be applied to reduce the costs deducted from the revenue streams in such amounts and such proportions as VPL shall determine to be reasonable in all the circumstances.
- 6.2 Tax payable by VPL shall be allocated across revenue streams in such proportions as VPL shall determine to be reasonable in all the circumstances.
- 6.3 Any music industry contributions shall be determined by the Board and then allocated across revenue streams in such proportions as VPL shall determine to be reasonable in all the circumstances.
- 6.4 Any further deductions from the revenue streams shall be made at the discretion of the Board (and, where appropriate, the Finance Committee) and in such proportions as VPL shall determine to be reasonable in all the circumstances.
- 6.5 After making the deductions and adjustments in Rule 5 and Rule 6 in respect of a particular Exploitation Period, the remaining monies from each revenue stream (or from a combination of similar revenue streams) shall constitute a Fund. For the avoidance of doubt, Funds may be constituted from a different combination of revenue streams than the combinations used for the purposes of allocating costs or making any other deductions and adjustments.
- 6.6 In establishing such Funds as it shall determine to be reasonable in all the circumstances, VPL shall take into account where appropriate:
- (1) all relevant characteristics of the individual licensees paying licence fees or the particular licences or tariffs relating to that Fund;
 - (2) the genre of Music Videos used by the licensee or licensees paying the licence fees from which the Fund is to be created;
 - (3) the number of persons to whom Music Videos are communicated by the licensee or licensees paying the licence fees from which the Fund is to be created;
 - (4) the nature of the use of the Music Videos by the licensee or licensees paying the licence fees from which the Fund is to be created; and

- (5) the availability and quality of usage information (or comparable information) for that Fund (see further Rule 7.5).
- 6.7 The Funds established by VPL shall be confirmed by the Distribution Committee in respect of each Exploitation Period.
- 6.8 The total monies in the Funds for any Exploitation Period shall be the Net Distributable Revenue for that Exploitation Period.

RULE SEVEN PROFILES

- 7.1 The monies in each Fund are allocated to particular Music Videos in accordance with the Profile established for that Fund.
- 7.2 In establishing Funds and Profiles the aim is to ensure that the licence fees received by VPL are allocated to particular Music Videos in such proportions as fairly reflect the relevant exploitation of the UK Rights in those Music Videos.
- 7.3 VPL shall create Profiles on the basis of actual usage (save where such usage information is not available for whatever reason or where the cost of obtaining or processing full and actual information would be disproportionate whether to the revenue represented by such usage or otherwise) as it shall determine to be reasonable in all the circumstances.
- 7.4 PPL may exclude Music Videos from a Profile as it shall determine to be reasonable in the circumstances, including where such Music Videos have been produced for purposes other than promotion of an associated sound recording or sale and distribution to the general public.

Examples:

- (a) *Music Videos produced to accompany television broadcasts (commissioned videos, channel idents)*
 - (b) *Music Videos produced for use in the advertising of products or services other than sound recordings*
 - (c) *Music Videos produced to accompany the exercise tracks used in fitness classes*
 - (d) *Karaoke Music Videos*
- 7.5 Where there are no or incomplete usage returns corresponding to the licence fees received by VPL, or such returns are unreliable (in whole or in part) for whatever reason, or processing full and actual usage data is reasonably determined by VPL to be disproportionate, VPL may take into account the following factors in exercising its discretion in creating Profiles:
 - (1) returns provided by similar licensees for similar exploitations of the rights controlled by VPL;

- (2) returns provided by licensees for a different exploitation of the rights controlled by VPL where such exploitation is linked to the exploitation of the rights giving rise to those licence fees;
 - (3) returns provided by licensees who exploit Music Videos of a similar genre to the Music Videos likely to have been used by the licensee who paid those licence fees;
 - (4) information provided to VPL evidencing which Music Videos were exploited;
 - (5) the reliability of such returns and information; and
 - (6) any other relevant information.
- 7.6 In considering whether a particular Music Video is referred to in a usage return (or other usage information) and therefore should be included in a Profile, VPL shall adopt such procedures as it shall determine to be reasonable in all the circumstances and where appropriate shall take into account factors such as:
- (1) the format of the usage report; and
- Example: the provision of electronic usage reports allows for automated matching*
- (2) the information provided in the usage report.
- 7.7 For the avoidance of doubt, in creating Profiles (and applying Funds to such Profiles) VPL shall be entitled to take into account usage in an Exploitation Period other than the Exploitation Period in which either the liability to pay the corresponding licence fees arose or, if different, the corresponding licence fees were received by VPL.
- 7.8 In creating and applying Profiles, VPL shall be entitled to take account information relating to the number of persons to whom Music Videos were communicated as a result of any particular usage or category of usage of Music Videos.
- 7.9 The monies in a Fund shall be allocated between the Music Videos in the relevant Profile in accordance with Rule 3 and on the following basis:
- (1) in direct proportion between the total amount of time that each particular Music Video was exploited and the total amount of time that Music Videos in that Profile were exploited; or
 - (2) in the absence of sufficient information to carry out the allocation in accordance with Rule 7.9(1), in direct proportion to the number of plays for each Music Video in that Profile.

- 7.10 In the absence of sufficient information to carry out an allocation in accordance with Rule 7.9(1) or Rule 7.9(2), VPL shall allocate the monies for a Fund as it shall determine to be reasonable in all the circumstances, such as by confirming estimates for the number of plays for each Music Video in a Profile and allocating monies between those Music Videos in direct proportion to those estimates.

RULE EIGHT RESERVE FUNDS

- 8.1 At any stage of the allocation and/or distribution of monies in respect of an Exploitation Period, sums may be set aside from the Net Distributable Revenue in such proportions determined to be reasonable by VPL.
- 8.2 Monies deducted pursuant to Rule 8.1 shall be transferred into Reserve Funds which shall accrue interest at such times and in such amounts as VPL shall determine to be reasonable in all the circumstances.
- 8.3 Monies held in a Reserve Fund created pursuant to Rule 8.1 shall be used for the specific purpose (or purposes) for which that fund is established and shall be paid out in accordance with that specific purpose (or purposes) at such times and in such amounts as VPL shall determine to be reasonable in all the circumstances.
- 8.4 For the avoidance of doubt, in the event that any monies held in a Reserve Fund consist (in whole or in part) of licence fees paid to VPL in respect of the use of a specific Music Video and VPL reasonably determines that the Music Video does not satisfy the requirements of Rule 3.1 then for the avoidance of doubt VPL is entitled to return the licence fees that relate to that Music Video to the licensee that made the payment at such time as VPL shall determine to be reasonable in all the circumstances.
- 8.5 For the avoidance of doubt, to the extent that there is any surplus left in a Reserve Fund, that surplus shall be added to the Net Distributable Revenue (whether for the current Exploitation Period or for any other Exploitation Period) as VPL shall determine to be reasonable in all the circumstances.

RULE NINE ALLOCATION OF REVENUES BETWEEN MEMBERS

- 9.1 Revenues allocated to the relevant Member or Members in respect of a particular Music Video pursuant to Rule 7 shall be allocated to that Member or between those Members in accordance with Schedule 2.

RULE TEN PAYMENTS TO MEMBERS

- 10.1 Rules 10.1 to 10.16 inclusive set out the way in which VPL shall carry out its contractual duty to make payments to the Members subject to any statutory limitation (as applied by VPL in accordance with any distribution closure policy).
- 10.2 The monies allocated to a Member shall be paid out to the Member or to a duly appointed person such as:
- (1) any party to whom the Member has transferred the contractual right to receive payments (subject to VPL receiving full notification of this transfer);
 - (2) any third party in respect of whom the Member (or, where appropriate, the person to whom the contractual right to receive payments has been transferred under Rule 10.2(1)) has given specific and valid authority to VPL to pay part or all of those monies (which may include, without limitation, any fee payable for membership of any trade association of which the Member is a member); or
 - (3) any third parties to whom VPL is obliged to make payments of those monies by law or lawful court order.

Corporate Group payments

- 10.3 Payments to be made pursuant to these Rules can be made to a Corporate Group (or to a single member of that Corporate Group) rather than to the individual members of that Corporate Group at the request of that Corporate Group and the discretion of VPL.

Payments

- 10.4 Payments shall be made to Members at such times as VPL shall determine to be reasonable in all the circumstances. For the avoidance of doubt, provisional payments may be made in respect of an Exploitation Period in accordance with these Rules. Such payments may be calculated on the basis of provisional information regarding the use of Music Videos and the ownership and control of the UK Rights in Music Videos relating to that Exploitation Period.

Interest

- 10.5 Where interest has accrued on any revenues allocated to Members (whether deducted from costs pursuant to Rule 6.1 or otherwise), such interest shall be added to any payments to Members relating to those revenues and made pursuant to these Rules at such times and in such amounts as VPL shall determine to be reasonable in all the circumstances.

Taxation

- 10.6 Taxation and charges shall be applied to payments to Members in accordance with VPL's legal obligations and Rule 6.2.

Deductions

- 10.7 Where an Overpayment has been made in respect of a Member,
- (1) VPL may deduct all or part of that Overpayment from any payment that is due in respect of that Member;

- (2) if that Member is in a Corporate Group, VPL may deduct all or part of that Overpayment from any payments due in respect of any Member in that Corporate Group;
- (3) if that Member has since transferred the repertoire in respect of which the Overpayment was made, VPL may also deduct all or part of that Overpayment from any payment that is due in respect of any Member who has acquired control of all or part of that repertoire; and
- (4) if that Overpayment has been included in a payment made by VPL to any organisation acting on behalf of one or more Members, VPL can deduct all or part of that Overpayment from any payments to that organisation,

provided that there is no double recovery of any part of an Overpayment (whether under this Rule 10.7, Rule 10.11 or otherwise).

- 10.8 Any deduction made pursuant to Rule 10.7(3) shall be limited to the payments that are due in respect of the Member and repertoire that was the subject of the Overpayment.
- 10.9 For the avoidance of doubt, VPL may recover parts of an Overpayment from more than one person under these Rules according to any one criterion or any combination of criteria set out in Rule 10.7 (and in such order of persons as VPL determines to be reasonable in all the circumstances) provided that the total sum recovered shall be no more than the Overpayment (plus any interest due under Rule 10.11 below).

Repayment

- 10.10 Where an Overpayment has been made in respect of a Member and such Overpayment has not been recouped in full by VPL pursuant to Rule 10.7, that Member (or the person entitled to receive payment on their behalf) shall repay to VPL that sum (or the unrecouped part of that sum) within 10 Working Days of the receipt of a written request from VPL. For the avoidance of doubt, VPL's rights under this Rule 10.10 shall not be dependent upon VPL having first exercised its rights under Rule 10.7.

Interest on Deductions and Repayments

- 10.11 Where a deduction is made from the distribution in respect of a Member pursuant to Rule 10.7, or a repayment has to be made to VPL in accordance with Rule 10.10, interest may be added to that deduction or repayment in such amounts as VPL shall determine to be reasonable in all the circumstances.

Waiver

- 10.12 VPL's ability to recover an Overpayment is not waived by the payment of any further monies in respect of that Member (or by the attempted or partial recoupment of that Overpayment, whether from that Member or from any other party) after the making of the Overpayment.

Holding of monies

10.13 Subject to any statutory limitation, the monies in the account of a Member may be held as VPL determines to be reasonable in all the circumstances. For example, VPL may refrain from making distributions:

- (1) pending the amount of those monies reaching an appropriate level for a payment to be made;
- (2) pending the resolution of any disputes concerning distributions in respect of that Member and/or distributions to any Members in the same Corporate Group as that Member;
- (3) pending the receipt by VPL of sufficient data relating to that Member's Music Videos according to VPL's data policy as adopted and amended from time to time;
- (4) pending the investigation and resolution of any other concerns that VPL might have concerning the Member and/or the monies in that Member's account (including, without limitation, disputes as to the ownership or control over rights in a Music Video); or
- (5) pursuant to any court order or other legal duty.

Confirmation of repertoire

10.14 Each Member shall notify any changes (additions or deletions) of repertoire to VPL as soon as possible (and in accordance with Rule 10.13 VPL has the right to suspend any distributions to a Member until its confirmation has been received).

Notification and return of Overpayments

10.15 Each Member (or the person entitled to receive payments on behalf of that Member pursuant to Rule 10.2) must inform VPL in writing within 10 Working Days of receiving from VPL monies that are not due to them or of becoming aware that the monies are not due to them (whichever date is later) and return those monies at the same time.

Charity Music Videos

10.16 In respect of a Music Video made for or attributable to charitable purposes, VPL shall pay to the relevant person under Rule 10.2 the sum allocated to the relevant Member (or Members) unless VPL receives a written direction to the contrary from that person.

**RULE ELEVEN
ADJUSTMENTS**

General Adjustments

11.1 Adjustments to the amounts allocated to Music Videos or to Members may be made where VPL determines it to be reasonable in all the circumstances, such as where VPL wants to take account of:

- (1) additional revenues being available for distribution (or additional or revised information being available in respect of the usage of Music Videos); or
 - (2) additional or revised information concerning the ownership of the relevant rights in a Music Video.
 - 11.2 Any adjustment pursuant to Rule 11.1 may increase or reduce the revenues allocated to a particular Music Video as well as the allocations of such revenues between Members.
- Extraordinary adjustments**
- 11.3 Where VPL decides that it is reasonable in all the circumstances the distribution of a revenue stream shall be revised or redone.
 - 11.4 Any extraordinary adjustment under Rule 11.3 may alter the revenues allocated to a particular Music Video and may alter the allocations of that part of the Fund between Members.

RULE TWELVE ADDITIONAL PROVISIONS

Commencement

- 12.1 These Rules apply to the distribution of monies in respect of the Exploitation Period starting on 1 January 2013 and (subject to any revision or replacement of these Rules) any subsequent Exploitation Periods. These Rules may apply to the distribution of monies in respect of Exploitation Periods starting prior to 1 January 2013 as VPL determines to be reasonable in all the circumstances.

Applicable Law

- 12.2 These Rules shall be construed and interpreted in accordance with the laws of England and Wales, the courts of which shall be the sole and exclusive courts of competent jurisdiction in all matters concerning the same.

Rules

- 12.3 References to Rules are to the rules set out in this document.

Headings

- 12.4 The headings in these Rules are for information only and do not form part of these Rules.

Examples

- 12.5 The use of examples in these Rules is for information only and these examples do not form part of these Rules.

Amendments

- 12.6 Subject to Rule 12.7, any amendment to these Rules must be approved by a majority of the Board to be effective.

- 12.7 The provisions of Rules 1 to 12 take precedence over the provisions of any Schedules to the Rules and any amendment to any Schedule to these Rules must be approved by VPL.
- 12.8 For the avoidance of doubt, where there is any conflict between these Rules and any other VPL documentation (such as the VPL website), these Rules shall prevail in the absence of express wording (explicitly referring to this Rule 12.8) to the contrary.

SCHEDULE 1
MUSIC VIDEO QUALIFICATION
As of 6 April 2013

1. Introduction

For the purpose of taking a proportional approach to the administration of VPL's role, qualification of a Music Video for allocations and payments under the VPL Distribution Rules will ordinarily be determined by reference to the subsistence of copyright in the Film represented by the Music Video, subject to certain further provisions in respect of duration. VPL retains the discretion to treat a Music Video as qualifying for allocations and payments in the event that VPL controls any other aspect of the UK Rights that may exist in a Music Video and nothing in this schedule shall be taken as precedential regarding the nature or scope of the UK Rights.

1.1 A Music Video will qualify for allocations and payments of VPL's licence fee income in accordance with the provisions of this Schedule if:

- (1) it qualifies for copyright protection in the United Kingdom;
- (2) that protection was valid at the time that the rights in that Music Video were exercised; and
- (3) VPL controls the UK Rights in that Music Video in respect of that exploitation of the Music Video.

1.2 Music Videos qualify for copyright protection in two ways:

- (1) Authorship. The country of authorship must be the United Kingdom or one of certain foreign countries (which for the purpose of this Schedule are referred to as "Qualifying Countries", see further Clause 4.1), although it is not necessary for the country of authorship to have been a Qualifying Country at the time that the Music Video was made.
- (2) Publication. The Music Video must have been first published in the United Kingdom or in a Qualifying Country (although again it is not necessary for that country to have been a Qualifying Country at the time of the publication).

1.3 It is only necessary for one of the two tests in Clause 1.2 to be satisfied for copyright protection to be acquired.

Example: the country of authorship might not be the United Kingdom or a Qualifying Country but the Music Video will still acquire copyright protection if it was first published in the United Kingdom or a Qualifying Country.

1.4 A Music Video only qualifies for copyright protection whilst copyright subsists in that Music Video (see further Clause 5.1 below).

2. Authorship

- 2.1 The author of a Music Video is the producer and the principal director of that Music Video (where the producer is the person by whom the arrangements necessary for the making of that Music Video were undertaken).¹
- 2.2 For the Music Video to have copyright protection in the United Kingdom, at least one of the authors of the Music Video must have been in one of the following four categories at the time that the Music Video was made (the time that the final edit of the Music Video was completed):
- (1) A British citizen, a British Dependent Territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British protected person within the meaning of the British Nationality Act 1981,² or
 - (2) An individual domiciled or resident in the United Kingdom,³ or
 - (3) A body incorporated under the law of a part of the United Kingdom,⁴ or
 - (4) A citizen or subject of, an individual domiciled or resident in, or a body incorporated under the law of, a country that was, or at any time since has become, a Qualifying Country.⁵
- 2.3 In identifying the country of authorship (for example, the country of nationality, residence, domicile or incorporation) under Clause 2.2:
- (1) VPL will accept that a person was resident in a country at the time that a Music Video was made if that person was registered for tax or for voting in central or local government elections in that country at that time.
 - (2) VPL will accept that a person was domiciled in a country at the time that a Music Video was made if that person had his or her permanent home in that country at that time.
- 2.4 It is not necessary for the country of authorship to have been a Qualifying Country at the time that the Music Video was made. However, the copyright protection will only take effect from the time that the country of authorship became a Qualifying Country (although in accordance with Clause 6.3 VPL may elect to treat the Music Video as qualifying for protection from an earlier date for the purposes of the Distribution Rules).

3. Publication

¹ Section 9(2)(ab) and Section 178 of the 1988 Act. All statutory references in this Schedule are to the 1988 Act unless stated otherwise.

² Section 154(1)(a).

³ Section 154(1)(b).

⁴ Section 154(1)(c).

⁵ Section 154(2).

3.1 Subject to Clause 3.2, a Music Video qualifies for copyright protection if it is first published in:

- (1) the United Kingdom,⁶ or
- (2) a Qualifying Country.⁷

3.2 The simultaneous publication rule provides that a Music Video that was not first published in the United Kingdom or a Qualifying Country will still qualify for copyright protection if it was published in the United Kingdom or a Qualifying Country within 30 days of the first publication.⁸

3.3 For a Music Video to acquire copyright protection by virtue of the place where it was first published, it is not necessary for the place of publication to have been a Qualifying Country at the time of publication. However, the copyright protection will only take effect from the time that the country in which the Music Video was first published became a Qualifying Country (although in accordance with Clause 6.3 VPL may elect to treat the Music Video as qualifying for protection from an earlier date for the purposes of the Distribution Rules).

3.4 Publication means the issue of copies to the public.⁹ Publication does not include the Music Video being played in public or being communicated to the public by electronic means (such as in a broadcast or by making available the Music Video for downloading).¹⁰

4. Qualifying Countries

4.1 A Qualifying Country is one that has been designated¹¹ (or is treated by VPL) as providing reciprocal protection in respect of Music Videos. The Qualifying Countries are set out in Annex 1 to this Schedule. For the avoidance of doubt, the inclusion of a country in the Annex does not mean that that country has been a Qualifying Country at all previous times.

4.2 The rules for Qualifying Countries are different depending on whether or not the licence fee income relates to public performances, communications to the public (such as broadcasts) or to dubbing. The Annex therefore distinguishes between:

- (1) Qualifying Countries in respect of dubbing,¹²
- (2) Qualifying Countries in respect of public performances,¹³

⁶ Section 155(1)(a).

⁷ Section 155(2).

⁸ Section 155(3).

⁹ Section 175(1)(a).

¹⁰ Section 175(4)(c).

¹¹ The Annex is consistent with the lists of countries in the Copyright and Performances (Application to other Countries) Order 2012 SI No 799, amended by the Copyright and Performances (Application to Other Countries) (Amendment) Order 2012 SI No 1754...

¹² The right of copying Films under Section 17 of the 1988 Act. See Articles 2(2) and 4 of the 2012 Order as to which countries are designated as qualifying countries for this right.

- (3) Qualifying Countries in respect of broadcasts,¹⁴ and
 - (3) Qualifying Countries in respect of other communications to the public.¹⁵ Such communications to the public include using a Music Video in a making available service or in any other electronic transmission to the public that is not a broadcast (an example being a watch again service such as the BBC i-player).
- 4.3 Once a work qualifies for copyright protection, copyright does not cease to subsist because of any subsequent event (for example, the country in which the Music Video was first published subsequently is not included in the relevant part of the Annex).¹⁶
- 4.4 Subject to Clause 6.3, where the Music Video is created before the date on which the relevant country was added to the Annex, the copyright protection only applies to the use of the copyright from that date.

5. Duration of copyright

- 5.1 The duration of copyright in Films is determined under Section 13B(2) of the 1988 Act as being until 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons—
- (a) the principal director,
 - (b) the author of the screenplay,
 - (c) the author of the script, or
 - (d) the composer of music specially created for and used in the film;
- 5.2 As the first Music Videos were created around 1960 and the duration of copyright protection in Music Videos will therefore not begin to expire until 2030, VPL does not currently consider it proportionate and cost effective to gather, hold and process information required to determine the duration of copyright protection in each Music Video and instead treats all Music Videos that meet other requirements for copyright protection as being so protected, regardless of considerations regarding duration of copyright protection.

6. Presumptions

- 6.1 Unless VPL is given reason to believe that a Music Video is not protected by copyright (insofar as the UK Rights are concerned), VPL shall be entitled to rely upon the information for that Music Video on the VPL Repertoire Database when determining whether it qualifies for copyright protection under the Distribution Rules.

¹³ The right to play Films in public under Section 19 of the 1988 Act. See Articles 2(2) and 4(1) of the 2012 Order as to which countries are designated as qualifying countries for this right. .

¹⁴ The right to broadcast Filmss under Section 20 and Section 6 of the 1988 Act, but excluding all other communications to the public.. See Articles 2(2) and 4 of the 2012 Order as to which countries are designated as qualifying countries for this right.

¹⁵ The right to communicate the Films to the public under Section 20 of the 1988 Act (excluding the right to broadcast the work. See Articles 2(2) and 4 of the 2012 Order as to which countries are designated as qualifying countries for this right.

¹⁶ Section 153(3).

Example: VPL shall be entitled to rely on the publication date for the Music Video provided by the relevant Member.

- 6.2 Where it appears from information provided by a Member that VPL controls some or all of the UK Rights in a Music Video then unless VPL is given reason to believe otherwise, VPL shall be entitled to treat the relevant parts of the UK Rights in that Music Video as being controlled by VPL for the purposes of the Rules.
- 6.3 Where VPL determines that it is reasonable in all the circumstances it may allocate an appropriate share of licence fee income to a Member in respect of the use of a Music Video in the whole or a part of a particular Exploitation Period even if that use took place:
- (1) Before the date on which the country of authorship or the country of publication became a Qualifying Country within that Exploitation Period;
 - (2) Before the date on which the Member responsible for that Music Video joined VPL within that Exploitation Period (assuming that such Music Video was not previously in VPL's repertoire by virtue of an assignment or agency appointment from another Member);
 - (3) Before the date on which the Member responsible for that Music Video acquired the relevant rights in that Music Video (and transferred such rights to VPL) (assuming that such Music Video was not previously in VPL's repertoire by virtue of an assignment or agency appointment from another Member); or
 - (4) After the date on which (for whatever reason) VPL no longer controlled the UK Rights in that Music Video (or copyright no longer subsisted in that Music Video).
- 6.4 Where in each case VPL has decided that it is reasonable in all the circumstances (such as where there is not satisfactory evidence to the contrary), VPL shall be entitled to:
- (1) rely upon the presumptions in Section 105(2) of the 1988 Act as to the owner of the copyright in a Music Video, the year of its first publication and the country of first publication; and/or
 - (2) presume that the producer and principal director of a Music Video under Clause 2.1 is of the same nationality as the country of filming (the place of the final cut) for that Music Video; and/or
 - (3) presume that a Music Video was made in the same year as its date of first publication.

7. Interpretation

- 7.1 Definitions used in the Distribution Rules shall apply to this Schedule unless stated otherwise.
- 7.2 References to a “Clause” are to a clause in this Schedule unless where indicated otherwise.
- 7.3 The use of examples in this Schedule (and its Annex) is for information only and these examples do not form part of this Schedule (and Annex).
- 7.4 The headings in this Schedule (and its Annex) are for information only and do not form part of this Schedule (and Annex).

Annex

Qualifying Countries

This Annex sets out the Qualifying Countries. For the avoidance of doubt, the inclusion of a country in any of the lists does not mean that that country has been a Qualifying Country at any time prior to the publication of this list.

As explained in Clause 3.2, a Music Video that is published in a country that is not a Qualifying Country in respect of public performances, broadcast and other communications to the public under Section 20 of the 1988 Act may still qualify for protection in respect of all such performances and communications if there was “simultaneous publication” in a Qualifying Country.

Country

Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia (including Norfolk Island), Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bermuda, Bhutan, Bolivia, Bosnia-Herzegovina, Botswana, Brazil, Brunei, Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus (Republic of), Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Faeroe Islands, Fiji, Finland, France (including all Overseas Departments and Territories), Gabon, Gambia, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Grenada, Guatemala, Guernsey, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland (Republic of), Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Jordan, Kazakhstan, Kenya, Korea, Democratic People's Republic of, Korea, Republic of Kuwait, Kyrgyzstan (previously Kyrgyz Republic), Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya (previously Libya), Liechtenstein, Lithuania, Luxembourg, Macao, Macedonia (former Yugoslav Republic of), Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Moldova (Republic of), Monaco, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, Netherlands Aruba Curacao, Sint Maarten and Antilles, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Taiwan, Tajikistan, Tanzania (United Republic of), Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United States of America (including Puerto Rico and all territories and possessions), Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe

SCHEDULE 2

MEMBER ALLOCATION RULES

- A This document sets out VPL's policy, known as the Member Allocation Rules, regarding how monies allocated to a Music Video in respect of the exercise of the UK Rights in that Music Video shall be allocated amongst the Members who are entitled to remuneration in respect of that Music Video.
- B For the avoidance of doubt, monies allocated to a Member may be paid to a third party (such as a party to whom the right to receive remuneration has been transferred or an administrator appointed to control the financial affairs of the Member). Furthermore, due to the need to ensure that payments are made promptly and the fact that all the relevant information may not be available to VPL, it may be necessary to revise the allocations and to make adjustments to distributions to take account of any relevant changes.

BACKGROUND

- C These Member Allocation Rules are a Schedule to (and are to be read in conjunction with) VPL's main Distribution Rules and they assume that:
- (a) after the creation of Funds (and the application of Profiles to those Funds) pursuant to the Distribution Rules, licensing revenues (arising from the exploitation of the UK Rights) have been allocated to each appropriate Music Video; and
 - (b) in accordance with the Distribution Rules appropriate adjustments (such as the deduction of VPL's administrative costs or the creation of Reserve Funds) have been applied to those licensing revenues.

OPERATIONAL CONTEXT

- D VPL holds information on 300,000 Music Videos on the VPL Repertoire Database. This data has been obtained from Members directly.

1. Aims

- 1.1 The aims of these Member Allocation Rules are to ensure that:

- (a) Member Video Allocation due to Members is allocated fairly and distributed efficiently, accurately, promptly and in a cost effective manner; and

- (b) VPL's allocations are in accordance with VPL's Articles of Association and VPL's contractual duties to Members.

2. Definitions

- 2.1 Definitions used in the Distribution Rules shall apply to this Schedule unless stated otherwise.
- 2.2 The following definitions are used in this Schedule:

Account	The balance (whether positive or negative) of monies provisionally due to a Member from VPL at any one time (and which, for the avoidance of doubt, is not held in a separate bank account for that Member).
Distribution Rules	VPL's main Distribution Rules.
VPL Repertoire Database	VPL's Music Video database with details of Music Videos controlled by VPL and of the Member (or Members) who either assigned to VPL, or appointed VPL as its (or their) agent in respect of, the UK Rights in those Music Videos (or, as the case may be, of CMOs and the rightsholders represented by them who have appointed VPL as their agent in respect of the UK Rights in those Music Videos).
Video Allocation	Revenues allocated to the Member (or Members) on a particular Music Video pursuant to Rule 7 of the Distribution Rules. For the avoidance of doubt, it shall be deemed that VPL's administrative costs and reserve funds have already been deducted from such revenues in accordance with the Distribution Rules.

- 2.3 References to a "Clause" are to a clause in this Schedule unless indicated otherwise.
- 2.4 The use of examples in this Schedule is for information only and these examples do not form part of this Schedule.
- 2.5 The headings in this Schedule are for information only and do not form part of this Schedule.

ALLOCATION OF MEMBER VIDEO ALLOCATION

3. **Members**

- 3.1 Subject to the provisions of this Schedule, the Member Video Allocation for a particular Music Video and a particular Exploitation Period shall be allocated to the Member (or those Members) who is (or are) registered as the rightsholder(s) on the VPL Repertoire Database (subject to revisions under Clause 6) in respect of that Music Video and that Exploitation Period.
- 3.2 For the avoidance of doubt, if different Members are entitled to revenue in respect of different aspects of the UK Rights in a particular Music Video and in a particular Exploitation Period, then subject to the Distribution Rules each of those Members will be entitled to revenue only in respect of those aspects of the UK Rights in that Music Video which they have assigned to VPL or in respect of which they have appointed VPL as their agent.
- 3.3 Clause 3.1 shall not apply to the extent that the relevant Member informs VPL in writing otherwise or VPL determines that it is reasonable in all the circumstances to allocate those monies (in whole or in part) to another Member.
- 3.4 For the avoidance of doubt, where the relevant rightsholder in respect of a particular Music Video is a member of a CMO, that rightsholder shall be allocated monies for that Music Video in accordance with Clause 3.1 (whether or not that rightsholder is itself a Member).

4. **Incorporated Content**

- 4.1 For the purposes of this Schedule:

“Incorporated Content” is a Music Video, sound recording or other content which has been published and subsequently a part (or all) of it has been incorporated into a separate Music Video.

A “Subsequent Video” is a Music Video which incorporates Incorporated Content.

An “Additional Video” is that part of a Subsequent Video additional to the Incorporated Content.

- 4.2 The Member Video Allocation for a Subsequent Video shall be allocated to the Member (or Members) responsible for the Additional Video in accordance with Clause 3.1. Unless VPL is properly informed in writing otherwise, it shall be for that Member (or Members) to pay the owners of the UK Rights in any Incorporated Content featured on that Subsequent Video.
- 4.3 For the avoidance of doubt, where VPL is informed that the use of Incorporated Content in a Subsequent Video was not licensed by the Member responsible for the Incorporated Video, VPL may suspend payments to (or in respect of) the Member responsible for the Additional Video pursuant to Rule 10.

5. Transfer of repertoire

5.1 Where there is a transfer of repertoire by one Member to another Member during an Exploitation Period, those Members must agree between themselves as to:

- (1) Which Member is to be paid by VPL for exploitations of the UK Rights in the period from the start of the Exploitation Period to the date of the transfer; and
- (2) Which Member is to be paid by VPL for exploitations of the UK Rights in any previous Exploitation Periods in respect of which the transferring Member controlled that repertoire,

but in the absence of such agreement (or the adequate notification of such agreement to VPL), VPL shall be entitled to pay the second Member as it determines to be reasonable in all the circumstances.

5.2 In adjusting allocations to take account of a transfer of repertoire (whether such adjustment is in accordance with instructions from the relevant Members or on the basis of VPL's discretion), VPL shall be entitled to treat the transfer as taking place on a date other than the actual date of the transfer where VPL determines this to be reasonable in all the circumstances.

Example: where the transfer of repertoire takes place on 27 November, VPL may decide to treat the transfer as taking place on 1 December on the basis that a substantial proportion of usage reporting to VPL takes place on a monthly basis.

REVISIONS

6. Revisions of Member Video Allocation

6.1 Without limitation to Rule 11 of the Distribution Rules where at any time (whether before or after a distribution) VPL determines that it is reasonable in all the circumstances (such as where there is the provision of further information to VPL, the conclusion of VPL research, and/or the receipt by VPL of a valid declaration form), VPL may revise the Member Video Allocation in respect of a particular Music Video and Exploitation Period.

7. Initial Distribution

7.1 In accordance with the Distribution Rules VPL may pay the Member (or Members) entitled to remuneration for a Music Video a share of the Member Video Allocation in respect of that Music Video pursuant to Clause 3 or, as appropriate, on the provisional allocations in Clause 3 .

ADJUSTMENTS TO THE ACCOUNTS OF MEMBERS

8. Adjustments

- 8.1 For the avoidance of doubt, and without limitation to Rule 11 of the Distribution Rules where a distribution of Member Video Allocation has taken place, it may be necessary to make adjustments to the Account(s) of the Member (or Members) in respect of that Music Video pending future distributions in accordance with the Distribution Rules where:
- (a) the allocation of the Member Video Allocation is revised and the Member (or Members) has (or have) been allocated either too much or too little of either the Member Video Allocation in respect of one or more Exploitation Periods; and/or
 - (b) the wrong amount of Member Video Allocation was paid to (or in respect of) a Member for any other reason.
- 8.2 Where a situation as specified in Clause 8.1 arises, VPL may:
- (a) when making distributions in respect of a Member and that Music Video (whether or not in respect of the Exploitation Period relating to the erroneous allocation), deduct any Overpayment from the amount to be paid in respect of that Member; and/or
 - (b) when making distributions in respect of that Member and other Tracks, deduct any Overpayment from the amount to be paid in respect of that Member; and/or
 - (c) make any other deductions (whether from payments to that Member or to third parties) as permitted under the Distribution Rules.
- 8.3 Any adjustments made pursuant to Clause 8.2 (whether in the form of additional payments or deductions from further distributions) shall be limited in time in accordance with the Distribution Rules.
- 8.4 Any exercise of Clause 8.2 by VPL shall not preclude VPL from exercising any other remedies in order to recover monies paid out to (or in respect of) Members in error.
- 8.5 For the avoidance of doubt, an adjustment to the allocation of Member Video Allocation in respect of one Exploitation Period does not mean that all relevant Members should receive the same allocations in respect of any future Exploitation Period.
- 8.6 VPL shall be under no obligation to notify all or any of the Members entitled to payment from VPL for the exploitation of the UK Rights in a Music Video of any amendments, adjustments and/or recalculations under this Clause 8.

GENERAL

9. **General**

- 9.1 In the event of a conflict between this Schedule and the Distribution Rules, the Distribution Rules shall prevail.
- 9.2 This Schedule may be amended from time to time by VPL, such amendment to be effective from the date specified by VPL.