

SCHEDULE 3

PERFORMER QUALIFICATION *As of 31 December 2019*

1. Introduction

1.1 For a person to qualify for equitable remuneration from PPL under Section 182D of the 1988 Act in respect of the public performance of a Sound Recording under Section 19 of the 1988 Act or a communication to the public of a Sound Recording (other than the making available of that Sound Recording) under Section 20 of the 1988 Act, the following three tests must be satisfied:

- (1) PPL must control the UK Rights in the Sound Recording, which must be a commercially published Sound Recording that in accordance with Schedule 1 qualifies for copyright protection;
- (2) that person must have been a Performer on the Sound Recording in accordance with Schedule 2; and
- (3) that person must be a qualifying Performer on the basis of their personal status or the status of the country in which their recorded performance took place (see further Clause 1.2).

1.2 PPL will accept a Performer as a qualifying Performer under Section 182D of the 1988 Act if it is PPL's reasonable belief (pursuant to the Distribution Rules and this Schedule) that at the time that the public performance or communication of the Sound Recording takes place (rather than the time of the original performance):¹

- (1) The country in respect of which the Performer was a citizen, subject or resident at the time when the original performance was given is a Qualifying Country;² or
- (2) The country in which the original performance was given by the Performer is a Qualifying Country.³

1.3 A Performer may be a qualifying Performer on some Sound Recordings but not on other Sound Recordings. If the Performer was a citizen of (or subject of or resident in) a particular country at the time of the performance and that country is not a Qualifying Country at the time of the exploitation, he or she will only be a qualifying Performer in respect of performances given in countries that are Qualifying Countries at the time of the exploitation.

1.4 Where a Performer is linked to more than one country in respect of a particular Sound Recording (for example, at the time of their performance the Performer was a citizen of one country but was resident in another country) then PPL shall

¹ *Experience Hendrix LLC v Purple Haze Records Ltd* [2007] EWCA Civ 501 (CA).

² Sections 181 and 206(1) of the 1988 Act.

³ Section 181 of the 1988 Act.

use the country that is most favourable to the Performer in qualifying for equitable remuneration in respect of that Sound Recording.

2. Qualification by reference to the status of the Performer

- 2.1 PPL will accept that a person is resident in a country if that person is registered for tax or for voting in central or local government elections in that country.

3. Qualification by reference to the place of performance

- 3.1 The country in which the original performance was given by the Performer is the place where the Performer was physically located at the time that the performance was recorded.

Examples:

If a Performer in a studio in France is recorded, the place of performance is France.

If the Performer is in France but the performance is recorded by way of a telephone link to a studio in the USA, the place of performance also is France.

4. Qualifying Countries

- 4.1 A Qualifying Country is the United Kingdom or any country that has been designated by the UK Government as providing reciprocal protection to performers⁴ or is treated by PPL as such a country.

- 4.2 A list of all Qualifying Countries is set out in Annex 1 to this Schedule.

5. Duration

- 5.1 Subject to Clause 6.4 and Clause 7.3, a performer's right to equitable remuneration under Section 182D of the 1988 Act shall be applied by PPL for the period of up to 70 years in which a sound recording including their recorded performance is protected by copyright pursuant to Clause 5.1 of Schedule 1.⁵

6. Presumptions

- 6.1 In the Clauses below the following definition shall apply:

"Nationality" means the nationality of a person by reference to the country of which they are a citizen or the country in which they are resident.

⁴ Sections 206(1)(b), (ba), (bb) and (c) and 208 of the 1988 Act. The relevant order made under Section 208 is the Copyright and Performances (Application to other Countries) Order 2016 SI No 1219 ("the Order").

⁵ Sound recordings published on or after 1 January 1963 may be subject to a copyright term of up to 70 years pursuant to Section 13A of the 1988 Act, as amended by The Copyright and Duration of Rights in Performances Regulations 2013 SI No 1782. Note that this legislative change does not affect the distribution of monies for the use of sound recordings up to 31 December 2013.

- 6.2 Where determined by PPL to be reasonable in all the circumstances, PPL will allocate and pay equitable remuneration to a Performer in respect of the use of a Sound Recording even if that use took place before (or after) the performer satisfied the requirements in Clause 1.2 for that Sound Recording:
- (1) Where a country becomes a Qualifying Country (whether by becoming a Member State of the European Union or becoming an Approved Country) or ceases to be a Qualifying Country during a particular Exploitation Period, PPL is entitled to decide to treat that country as being a Qualifying Country for the entire duration of that Exploitation Period.
 - (2) Where a country provides appropriate reciprocal protection to the rights of performers in that country, PPL is entitled to decide to treat that country as being a Qualifying Country for the whole (or part) of any Exploitation Period in which that protection was provided.
- 6.3 PPL shall be entitled to presume that a Sound Recording is a commercially published Sound Recording (within the meaning of Section 182D(1) of the 1988 Act) and is within its repertoire as it shall determine to be reasonable in all the circumstances.
- 6.4 Where PPL has decided that it is reasonable in all the circumstances (such as where there is not satisfactory evidence to the contrary), PPL shall be entitled to presume that:
- (1) the status of a Performer in respect of a particular Sound Recording does not change from one Exploitation Period to another;
 - (2) the place where a performance was given is the same as the place where the Sound Recording incorporating that performance was made;
 - (3) the place where a Sound Recording was made is the place listed on any packaging (such as the inlay card of a cassette) enclosing or accompanying the Sound Recording when it is made commercially available;
 - (4) the date on which the performance was given is the same as the date of the commercial release of the Sound Recording incorporating that performance;
 - (5) where a Sound Recording is a re-master or a remix of an earlier Sound Recording, the date on which the performance was given is the same as the date of the commercial release of that re-master or remix;
 - (6) the Nationality of the Performer is the same as that when either the Performer registered with PPL or the Sound Recording was made, priority being given to the information that is closest in time to the date of the performance (or, in accordance with Clause 6.4(4), the date on which the Sound Recording was released) or the date upon which the relevant use of the Sound Recording took place;

- (7) where PPL is unable to rely upon Clause 6.4(6), the Nationality of the Performer is that of the place in which the performance was given (for the avoidance of doubt, PPL can use the presumptions in Clause 6.4(2) and Clause 6.4(3) if the place where the performance was given is not known to PPL); and
- (8) where some or all Performers on a Sound Recording are members of what PPL reasonably believes to be an ensemble (or choir), the Nationality of each such Performer will be the same as the place of performance (and PPL can use the presumptions in Clause 6.4(2) and Clause 6.4(3) if the place where the performance was given is not known to PPL).

7. Samples

7.1 For the purposes of this Clause 7:

A “Sampled Recording” is a Sound Recording which has been commercially published and subsequently a part (or all) of it has been incorporated into a separate Sound Recording.

A “Subsequent Sound Recording” is a Sound Recording which incorporates a Sampled Recording.

An “Additional Sound Recording” is that part of a Subsequent Sound Recording additional to the Sampled Recording.

7.2 All Performers on the Sampled Recording shall be assessed as to whether or not they are qualifying Performers on the Subsequent Sound Recording on the basis of information relating to the Sampled Recording (and not the Subsequent Sound Recording). The inclusion of a Performer on the Sampled Sound Recording on the line up for allocation of monies for the Subsequent Sound Recording is determined by Clause 4.1 to Clause 4.7 of Schedule 5 to the Distribution Rules (subject to Rule 12.3).

7.3 Where in each case PPL has decided that it is reasonable in all the circumstances (such as where there is not satisfactory evidence to the contrary), PPL shall be entitled to presume that the duration of the right to equitable remuneration for each Performer deemed to have contributed a performance to the Subsequent Sound Recording (in accordance with Schedule 5 to the Distribution Rules) shall be the same as that for any Performer on the Additional Sound Recording.

8. Interpretation

8.1 Definitions used in the Distribution Rules shall apply to this Schedule unless stated otherwise.

8.2 References to a “Clause” are to a clause in this Schedule unless where indicated otherwise.

- 8.3 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).
- 8.4 The headings in this Schedule (and its Annex) are for information only and do not form part of this Schedule (and Annex).

Annex 1

This Annex sets out the Qualifying Countries for the right to equitable remuneration as at 31 December 2019.

The list also indicates whether any of the Qualifying Countries are treated by PPL as such in respect of only limited activities (rather than all public performances and broadcasts).

Under the primary and secondary legislation countries such as EEA States, Rome Convention countries and WIPO Performances and Phonograms Treaty (“WPPT”) countries will be Qualifying Countries. In some cases the extent to which they provide reciprocal rights will depend upon whether they made any declarations to the Rome Convention and/or WPPT and the extent to which such declarations are applied in practice).

As the status of countries may change (for example, by becoming a WPPT country) the list set out below may not necessarily be the list applied to PPL’s future distributions. For the avoidance of doubt, the inclusion of a country in this Annex does not mean that that country has been or will remain a Qualifying Country at any time before or after that date.

Country	Status
Albania	Full
Algeria	Full
Andorra	Full
Argentina	Full
Armenia	Full
Austria	Full
Azerbaijan	Full
Bahrain	Full
Barbados	Full
Belarus	Full
Belize	Full
Belgium	Full
Benin	Full
Bermuda	Full
Bolivia	Full
Bosnia and Herzegovnia	Full
Botswana	Full
Brazil	Full
Bulgaria	Full
Burkina Faso	Full
Canada	Full
Cape Verde	Full
Chile	Full

Country	Status
Colombia	Full
Congo	Full
Costa Rica	Full
Croatia	Full
Cyprus	Full
Czech Republic	Full
Denmark	Full
Dominica	Full
Dominican Republic	Full
Ecuador	Full
El Salvador	Full
Estonia	Full
Faeroe Islands	Full
Fiji	Full
Finland	Full
France	Full
Gabon	Full
Georgia	Full
Germany	Full
Ghana	Full
Gibraltar	Full
Greece	Full
Greenland	Full
Guatemala	Full
Guernsey	Full
Guinea	Full
Honduras	Full
Hungary	Full
Iceland	Full
Indonesia	Full
Isle of Man	Full
Israel	Full
Italy	Full
Jamaica	Full
Japan	Full
Jersey	Full
Jordan	Full
Kazakhstan	Full
Korea, Republic of	Full
Kyrgyzstan	Full
Latvia	Full
Lebanon	Full
Lesotho	Full
Liberia	Full
Liechtenstein	Full
Lithuania	Full

Country	Status
Luxembourg	Full
Macedonia	Full
Malaysia	Full
Mali	Full
Malta	Full
Mexico	Full
Moldova	Full
Monaco	Full
Mongolia	Full
Montenegro	Full
Morocco	Full
Netherlands Antilles, Curacao, Sint Maarten and Aruba	Full
Netherlands	Full
Nicaragua	Full
Niger	Full
Nigeria	Full
Norway	Full
Oman	Full
Panama	Full
Paraguay	Full
Peru	Full
Philippines	Full
Poland	Full
Portugal	Full
Qatar	Full
Republic of Ireland	Full
Romania	Full
Russian Federation	Full
Saint Lucia	Full
Saint Vincent and the Grenadines	Full
Senegal	Full
Serbia	Full
Slovak Republic	Full
Slovenia	Full
Spain	Full
Sweden	Full
Switzerland	Full
Syrian Arab Republic	Full
Tajikistan	Full
Togo	Full
Trinidad and Tobago	Full
Turkey	Full
Ukraine	Full
United Arab Emirates	Full
United Kingdom	Full

Country	Status
United States of America (including Puerto Rico and all territories and possessions)	Full (but only for the digital transmissions to which UK performers in the USA would be entitled to equitable remuneration)
Uruguay	Full
Venezuela	Full
Vietnam	Full