

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.

CONTENTS

Rule One	Aims
Rule Two	List of Definitions
Rule Three	Qualification of Music Videos
Rule Four	The distribution scheme
Rule Five	Costs allocation
Rule Six	Funds
Rule Seven	Profiles
Rule Eight	Reserve Funds
Rule Nine	Allocation of revenues between Members
Rule Ten	Payments to Members
Rule Eleven	Adjustments
Rule Twelve	Additional provisions
Schedule One	Music Video Qualification
Schedule Two	Allocation Rules

**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.