

**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).<sup>1</sup>

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,<sup>2</sup> or
- (2) An individual domiciled or resident in the United Kingdom,<sup>3</sup> or
- (3) A body incorporated under the law of a part of the United Kingdom,<sup>4</sup> 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.<sup>5</sup>

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**

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<sup>1</sup> 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.

<sup>2</sup> Section 154(1)(a).

<sup>3</sup> Section 154(1)(b).

<sup>4</sup> Section 154(1)(c).

<sup>5</sup> 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,<sup>6</sup> or
- (2) a Qualifying Country.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> 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).<sup>10</sup>

#### **4. Qualifying Countries**

4.1 A Qualifying Country is one that has been designated<sup>11</sup> (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,<sup>12</sup>
- (2) Qualifying Countries in respect of public performances,<sup>13</sup>

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<sup>6</sup> Section 155(1)(a).

<sup>7</sup> Section 155(2).

<sup>8</sup> Section 155(3).

<sup>9</sup> Section 175(1)(a).

<sup>10</sup> Section 175(4)(c).

<sup>11</sup> 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...

<sup>12</sup> 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,<sup>14</sup> and
  - (3) Qualifying Countries in respect of other communications to the public.<sup>15</sup> 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).<sup>16</sup>
- 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.

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<sup>13</sup> 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. .

<sup>14</sup> The right to broadcast Films 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.

<sup>15</sup> 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.

<sup>16</sup> 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