



## More information

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## What is an ex gratia payment?

An ex gratia payment is generally defined as a discretionary payment; that is, a payment made by an organisation or individual who is under no obligation to do so.

## Introduction

Copyright Agency Limited (CAL) uses records of use of works by licensees to distribute the licence fees it receives. Members are entitled to claim money from CAL's distributions when their works appear in these records and where they control the rights to these works.

The records collected under a majority of CAL's licence schemes are collected under a sampling system. This means that it is possible for a member's works to be used under a CAL licence but not appear in the copying records and as a result not be allocated money from CAL's distributions of licence fees received under that licence scheme.

CAL has implemented an ex gratia scheme to provide an opportunity to assess the claims of CAL members whose works have been substantially used under a CAL licence based on records provided under a sampling system, but have not appeared (or appeared insignificantly) in the usage records.

This information sheet will assist members in understanding CAL's policy on ex gratia payments.

## Sampling systems and CAL distributions

Under a sampling system a selection of licensees from each licence scheme is required to participate in a survey of their copying practices. The key aim in designing a sample survey is to balance two competing factors. These are:

- the sample must be large enough to be statistically reliable, but not so large as to destroy the cost and administrative benefits of having a sample; and
- the sample must be small enough so that participants benefit from not being required to provide data all the time, but not so small that it is not statistically reliable.

The objectives of a sample survey are to:

- estimate the volume of use, which may determine the licence fee payable; and
- identify the works used under the licence so payment can be made to rightsholders in those works.

The alternatives to sampling involve either permanent record-keeping by everyone, everywhere, all the time (which is very burdensome, costly and inefficient), or discouraging people from using works (which would be a loss to all concerned). Keeping full records has been found by most to be a burden, far more costly and, somewhat paradoxically, proved to be much less accurate than a well designed and managed survey.

CAL's use of sampling systems to distribute the licence fees it receives means it may be possible for a member's works to be used under a CAL licence but not allocated money from the distribution for that licence scheme. For example, the member's works could be used by a licensee not included in one of CAL's surveys. Alternatively, the works could be used by that licensee outside the period in which the survey was conducted.

The ex gratia payments system enables members whose works are substantially used under a CAL licence but do not appear in the usage records to claim payment for use of their works.



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For further information on CAL distributions see *CAL's sampling and distribution: how do they work?* information sheet.

## Ex gratia payments and copying outside CAL's licences

The ex gratia payments system only applies to copying done under a CAL licence. For example, works used by an organisation which does not have a CAL licence, or which are copied outside the terms of a licence (including exceptions in the *Copyright Act 1968* (the Act) such as fair dealing or under a direct licence from the publisher) do not fall within the scope of the ex gratia payments policy.

## Is CAL bound by any rules regarding ex gratia payments?

CAL is bound by a strict set of rules as to when, and to whom, it can make an ex gratia payment. These rules are contained in CAL's Distribution Rules, and relate to the requirements of the Act and the Attorney-General's Guidelines for the Declaration of Collecting Societies (the Guidelines).

The Guidelines govern CAL's activities as the declared collecting society responsible for educational and hardcopy government statutory licences.

CAL's Distribution Rules detail the way licence fees collected by CAL are distributed to members. The rules were developed by CAL's Board of Directors on behalf of members in order to explain the decisions CAL makes in relation to distributions.

## What do the Guidelines and Distribution Rules say?

The Guidelines and CAL's Distribution Rules set out that if a member can establish that their work has been substantially used under one of CAL's licence schemes, but that they received little or no remuneration, CAL should consider making an ex gratia payment.

While making provision for ex gratia payments, the Guidelines also recommend that collecting societies keep these payments to a minimum.

CAL's Distribution Rules elaborate on the Guidelines by discussing what steps CAL members must take to make a claim for an ex gratia payment.

## Can an ex gratia payment be made from all CAL licence schemes?

Ex gratia payments will not be made from schemes where distributions are based on full records of use.

## What evidence is needed to support an ex gratia claim?

CAL's rules about ex gratia payments require members to establish that 'substantial' use has occurred. CAL will determine what is or isn't 'substantial' on a case-by-case basis.

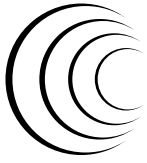
Ideally, members will be able to provide physical evidence of substantial use in order to support their claim. Examples include copies of the works made by a CAL licensee or statements from people who either received or made copies of those works.

If a member can't provide such evidence they will be required to complete a statutory declaration that should include details such as:

- the full bibliographical details of the work;
- the date of use;
- the number of copies made and the number of pages used from the publication;
- confirmation that evidence exists that the work has been used by a CAL licensee;
- the name(s) of the CAL licensee; and
- that the use was under a CAL licence.

## When can a claim for an ex gratia payment be made?

Claims can be made at any time until the distribution from which it is being claimed is rolled over. This is currently four years.



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## Who can approve an ex gratia payment?

Payments of up to \$5,000 can be approved by CAL's Chief Executive. Any payment over this amount must be approved by CAL's Board of Directors.

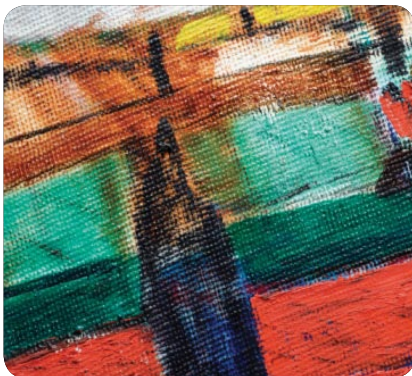
## Who is CAL?

Copyright Agency Limited (CAL) is a not-for-profit company set up by Australian authors, journalists, visual artists, photographers and publishers to manage part of their copying and communication rights. CAL is owned by its members, membership is free and members give CAL a non-exclusive licence in respect of their works.

## Code of Conduct

CAL is a signatory to the Code of Conduct for Copyright Collecting Societies (the Code). It is designed to ensure that the rights of all members and licensees are clearly stated, and that the operations of collecting societies are transparent and accessible.

The Code includes requirements for the Complaints Handling and Dispute Resolution procedures that collecting societies must follow. The Code and these procedures are available from CAL's website and on request.



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