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# Distribution Rules

This document provides a summary of the way licence fees collected by CAL are distributed to members. It has been developed by CAL's Board of Directors on behalf of the membership to explain the decisions CAL makes in relation to distribution.

If you do not understand any of the rules or have any suggestions for amendments to the rules you would like the directors to consider, please contact our Distribution staff by phone on (02) 9394 7600, by fax on (02) 9394 7601, or email us on [distrib@copyright.com.au](mailto:distrib@copyright.com.au).

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## 1. Introduction

Copyright Agency Limited (CAL) collects licence fees from both voluntary and statutory licences. CAL also receives money from other collecting societies. This money is distributed in accordance with the Scheme of Allocation using copying records provided to CAL. The Scheme of Allocation is determined by CAL's Board of Directors from time to time.

The Board exercises discretion in determining the Scheme of Allocation within the parameters outlined in CAL's Constitution, the *Copyright Act 1968* (the Act) and Regulations, the Guidelines for Declared Collecting Societies (the Guidelines), and CAL's membership agreements.

The Board is required to ensure the Scheme of Allocation is fair and seen to be fair. The overriding requirements are transparency, honesty, equity and efficiency.

The Scheme of Allocation must:

- 1) Be consistent and even-handed:
  - between groups of rightsholders (for example members and non-members, domestic and foreign rightsholders as well as classes of members);
  - between licence schemes (for example consistent allocation of costs between schemes); and
  - from year to year (for example current members should not subsidise future members).
- 2) Minimise cross subsidisation between voluntary and statutory licences; and
- 3) Ensure distributions are made expeditiously.

## 2. Auditing of distributions

CAL's external auditors (Camphin Boston) examine the calculation of the amount available for distribution, calculation of the distribution pools and how much each rightsholder is entitled to claim. An audit of the instances of copying from the survey records included on a Notification of Copied Works (Notification) is also conducted.

The auditors also examine the distribution payments made to members.

## 3. Licence schemes managed by CAL

The licence schemes managed by CAL can be divided into two broad categories – statutory licences and voluntary licences.

### (a) Statutory licences

CAL has been appointed by the Commonwealth Government as the declared collecting society to administer a number of licences granted under the Act. These include licences which allow educational institutions and institutions assisting people with disabilities to reproduce and communicate works for educational purposes. There is also a licence allowing Commonwealth, State and Territory governments to reproduce works and published editions for government purposes.

For the purposes of the statutory licences CAL represents all copyright owners whose works are copied and communicated. All members of CAL participate in the statutory licences.

Educational institutions and government pay a licence fee to CAL for the copying and communication under these licences.

Currently, no licence fee is set for institutions copying and communicating under the statutory licence for readers with disabilities. This is because CAL has decided to set the payment rate at zero.

#### **(b) Voluntary licences**

Members can also elect to participate in the voluntary licence schemes managed by CAL. Under these licences CAL grants a licence to copy on behalf of members who have elected to participate in that licence scheme.

Voluntary licences can be divided into three main categories:

- Blanket licences;
- New Media Licence Schemes; and
- the Copyright Clearance Service.

In addition, CAL has reciprocal agreements with a number of overseas copyright collecting societies. CAL receives money through these societies on behalf of Australian authors and publishers for copying of their works overseas.

Please refer to CAL's information booklet, *Becoming a Member of CAL*, for more information about the statutory and voluntary licence schemes managed by CAL. If you would like a copy of the information booklet or would like more information about your participation in the licence schemes, please contact CAL's Member Services staff on (02) 9394 7600 or email [members@copyright.com.au](mailto:members@copyright.com.au). The information booklet is also available from CAL's website.

## **4. Consistency between statutory and voluntary licences**

The Board has decided to apply the same requirements for the distribution of equitable remuneration (the defined term for licence fees received under the statutory licences) to licence fees received under the voluntary blanket licences.

## **5. Accounting period**

CAL's distributions are based on licence fees received during the previous calendar year, or other period of not more than 12 months as determined by the Board for the relevant licence scheme. Each of these periods is referred to as an accounting period. This approach allows the efficient allocation and distribution of revenue to rightsholders

On occasion the Board has exercised its discretion to include fees received after the end of the calendar year in a distribution if those licence fees should have been received during the accounting period.

For example the 2001 distribution pools are based on licence fees received during 2000. In addition, the Board has decided to include licence fees received to June 30, 2001 that should have been received during 2000 in the 2001 distribution pools.

The timing of the distribution of licence fees received in an accounting period is determined separately. Please refer to section 12.

In all other instances (including the annual report) CAL reports on a financial year basis, which is currently 1 July – 30 June.

## **6. Cash basis**

Distributions are calculated on a cash basis. This means that the actual licence fees paid during the relevant accounting period and the Board's estimate of the costs which will be incurred in that accounting period are used to calculate the distributions.

In all other instances (including the annual report) CAL uses accrual accounting.

## **7. Deduction of operating costs**

### **(a) Generally**

As a general rule CAL deducts its operating costs based on the actual costs incurred in the collection and distribution of licence fees during the accounting period.

Interest received during the accounting period is included in the calculation of the distribution pool.

### **(b) Deductions from the statutory and voluntary blanket licences**

CAL's operating costs are allocated against each pool based on the proportion of that pool to the total licence fees received.

For example if a licence scheme represents 10% of the total licence fees received during an accounting period it will be allocated 10% of the total costs incurred.

The administration fees charged to licensees for blanket licences are offset against CAL's operating costs.

### **(c) Deductions from the New Media Licence Scheme and Copyright Clearance Service**

The guidelines for the New Media Licence Scheme and the Copyright Clearance Service provide that CAL can deduct up to 20% from the licence fees received under these schemes.

This percentage will be reduced where the Board considers that a licence offers economies in CAL's administration costs compared to other schemes.

Any administration fees charged on New Media and Copyright Clearance licences are offset against CAL's operating costs.

### **(d) Deductions from amounts received from foreign collecting societies**

CAL deducts a fixed percentage for costs incurred in the distribution of foreign collections. This percentage is currently 7.5%.

The deductions made against CAL's collections from overseas collecting societies are offset against CAL's operating costs.

### **(e) Treatment of roll-overs**

Undistributed amounts from prior distributions that are to be rolled over into any of the current pools are rolled over without any further deduction of operating costs. The allocation of amounts to be rolled over is dealt with separately in section 16.

## 8. Cultural Fund

Articles 73(b) and 74(b)(iii) of CAL's Constitution permit the deduction of a Cultural Fund of up to 1% of licence fees received.

The allocation of the Cultural Fund is at the discretion of the Board.

The Cultural Fund is calculated at the end of each financial year and transferred to a separate account pending the Boards' decision on how it should be allocated.

The figures CAL quotes for its operating expenses includes the deductions made for the Cultural Fund.

## 9. Interest

Interest earned on licence fees held by CAL until they are distributed is added to the amount available for distribution for the accounting period in which the interest is received.

## 10. Amount available for distribution

The amount available for distribution from licence fees received in an accounting period is:

	Licence fees received
<b>Plus</b>	Interest earned on Trust Fund
<b>Less</b>	Operating costs
<b>Less</b>	Cultural Fund
<b>Equals</b>	Amount available for distribution

All licence fees received by CAL after deduction of CAL's operating costs and the Cultural Fund are available for distribution to members. The timing of the distribution of those licence fees is discussed in section 12.

## 11. Distribution pools

Money received under each licence scheme forms separate distribution pools. There may be multiple pools within one licence scheme. The Board will establish multiple distribution pools within a licence scheme where differential licence fees are paid for different material types or different types of copying.

For example the distribution of money received under the University licence has been divided into separate pools for course packs, artistic works, slides, musical works and loose copying. These pools are based on the differential payment rates set by the Copyright Tribunal in 1998.

## 12. Timing of distributions

Under most licence schemes distributions are made annually in the year following receipt of the licence fees. Under some of the smaller schemes distributions are made less frequently. For example distribution of money received under the adult education licence is made every second year.

In some instances the Board is required to carry forward some, or all, of the amounts available for distribution under a particular licence scheme for distribution in future accounting periods.

This may be necessary to ensure an equitable distribution of the money received. An example may be if CAL receives a payment representing copying in more than one year. It may also be necessary to carry amounts forward because there are at that time no records on which to base a distribution of the money received.

CAL calculates a number of distributions each year. The largest distributions are calculated in July and November. These distributions are normally based on licence fees received during the previous calendar year. CAL notifies members of the amounts they are entitled to claim from these distributions in August and January respectively.

The July distribution usually includes money received under the education and worship licences. The November distribution usually includes money received under the government, document delivery, media monitor, corporate and associations licences.

The Illustration Fund which provides payment to rightsholders entitled to payment for copying of their artistic works under s135ZM of the statutory education licence is calculated in March. CAL notifies members of the amounts they are entitled to claim from the Illustration Fund in April.

Currently, distributions under the New Media Licence and the Copyright Clearance Service are added to the next distribution. If this is not possible a separate distribution is made.

Money received from foreign collecting societies is distributed as soon as possible after receipt. If possible, the money is added to the July and November distribution pools. If not, a separate distribution is made.

Information about the individual pools in each distribution and a list of the foreign collecting societies from which CAL receives distribution payments are available on CAL's website. This information is updated regularly. Members who do not have access to CAL's website can contact CAL's Distribution staff.

### **13. Current Scheme of Allocation**

#### **(a) Domestic collections**

The Board determines the Scheme of Allocation of individual fees based on parameters set out in Article 73(c) and 75(d) of CAL's Constitution.

For domestic collections the Board has determined that, at present, the scheme will be solely based on records of copying. Under most licence schemes the copying records are provided by a representative sample of licensee organisations.

A small number of licensees are required or have elected to provide full records of their copying.

#### **(b) Foreign collections**

The distribution of money received from other collecting societies is based on the records supplied by the collecting society.

In cases where individual distribution is not possible (for example where the collecting society has not provided any records for distribution) the Board determines the method of distribution.

For example the Board recently decided to distribute money received from CANCOPY for copying by the Canadian government using records received under CAL's agreement with the Commonwealth government.

## **14. Members / Non-members**

Whether or not money is allocated to members only or to both members and non-members varies between licence schemes as follows:

### **(a) Statutory licences**

CAL allocates money to each work identified in the records, including those belonging to members, non-members and overseas rightsholders.

### **(b) Voluntary licences**

Money is allocated to members only (including rightsholders represented by foreign reproduction rights organisations) or to members and non-members (including foreign rightsholders).

Factors influencing this determination include the basis of calculation of the licence fee and whether the licence includes an indemnity or there are notified exclusions.

### **(c) Other collecting societies**

Money received from other collecting societies is allocated to both members and non-members in accordance with the records received and other conditions peculiar to the particular distribution prescribed by the foreign collecting society.

CAL does not licence copying of non-members works under any of its voluntary licence schemes.

## **15. Trust period**

CAL is required to hold undistributed amounts from the statutory licence distributions for a minimum of four years from the date of calculation of the distribution. The Board has discretion to extend this period to six years. The period CAL holds undistributed amounts is referred to as the trust period.

Undistributed amounts from the voluntary licences are held for the same period.

To date the Board has extended the trust period from four to six years. From 2001 the distributions will be rolled over after four years.

## **16. Roll-over**

At the end of the trust period any undistributed money will fall into one of the following categories:

- unidentifiable copying (up to and including the distributions for 2000);
- unidentified copying;
- allocated to rightsholders CAL has been unable to locate;
- allocated to rightsholders who have elected not to claim the money; or
- the total amount allocated to the rightsholder from all distributions is under \$50.00 (\$200.00 for non-residents of Australia).

At the end of the trust period the undistributed money is rolled over into the next distribution. For example the July 2000 distribution includes a roll over of money from the 1994 distribution.

At the present the Board has decided to add roll over amounts to the same distribution pool the roll over amount is from. For example the roll over of money from the TAFE pool is added to the next TAFE pool.

The Board has some discretion in the allocation of these funds however they must remain a distribution to rightsholders. For example, the Board has allocated money for copying of slides in universities from the 1994 roll over of undistributed money from the university pool. The balance was added to the July 2000 distribution pool.

## **17. Unidentifiable and unidentified copying**

In any distribution there will be records that do not clearly identify the work copied. These records are divided into two broad categories – unidentifiable and unidentified.

### **(a) Unidentifiable copying**

The information provided by the licensee on the record form identifies the work as copyright material but does not provide enough information about the work copied to enable the rightsholder to be identified and the money distributed.

CAL allocated money to such records until 2000. In 2001 the Board varied the scheme of allocation, and consequently will no longer allocate money to unidentifiable copying.

### **(b) Unidentified copying**

The information provided by the licensee on the record form is not sufficient to identify either the work or the rightsholder with complete certainty. Unidentified copying also includes instances where CAL can identify the work but cannot identify the rightsholder.

Money is allocated to these records. However, during the period CAL holds money after a distribution is calculated, efforts are made to identify the work and the rightsholder and distribute the money.

If CAL is unsuccessful identifying the work and/or the rightsholder the money is included in the roll over.

CAL does not allocate money to unidentified copying in member-only distributions. Please refer to section 14.

## **18. Calculation of the amount payable per work or record**

CAL's distributions are based on the copying records provided by licensees and other collecting societies (please refer to section 13). Money is allocated to individual copying records on a per page basis. This is done by:

- dividing the distribution pool by the number of copy pages in the copying records to calculate the page rate; and
- multiplying the copy pages for each record by the page rate.

In some instances money is allocated per instance of copying (for example per article).

The distribution pool is the sum of the amount payable for each copying record in the distribution.

## **19. Works excluded from a distribution**

The following works are excluded from CAL's distributions:

- 1) Works that can be identified as public domain.
- 2) Works of members who have decided to exclude their works from a particular voluntary licence scheme.
- 3) Non members works are excluded from distributions where money is only allocated to members (please refer to section 14).
- 4) Works of rightsholders who have advised CAL their works can be copied freely without payment of a licence fee. These are referred to as copyright-free. In this instance CAL asks the rightsholder to confirm that they either control 100% of the rights in the works to be excluded from the distribution or that they can exclude those works on behalf of other rightsholders.
- 5) Unidentifiable copying (please refer to section 17).

## **20. Allocation to rightsholders**

All money payable in respect of the copying of a particular work is attributed to one rightsholder in the work. The general rule for allocation of copying records to a rightsholder is as follows:

- To the author where the author of the work is a member of CAL; or
- To the publisher if only the publisher of the work is a member of CAL.

If neither the author nor publisher of a work are members CAL will allocate any money for copying of the work to the publisher. CAL has adopted this approach as publishers are (on the whole) easier to find.

There are a number of refinements to the general rule. These are set out below:

- If more than one author is a member of CAL the work is allocated alphabetically to one of those authors;
- Fine artists (or their agent) are always nominated as the recipient of an artistic work;
- Editors (unless CAL is advised to the contrary) are not nominated as recipients unless it is clear from information provided in the copying records that their contribution to the anthology has been copied;
- Non-member authors are nominated as the recipient where CAL has been advised the publisher does not control the rights. This includes journalists whose articles have been photocopied from a hardcopy edition of a newspaper or magazine;
- Where there is more than one author of a work (one of which is a member of the Media Entertainment and Arts Alliance) the CAL member is nominated as the recipient;
- Local representatives of foreign publishers are nominated as recipients before foreign collecting societies;
- Newspaper publishers (unless CAL is advised to the contrary) are always nominated as the recipient of faxed or digital copies of newspaper articles and for photocopying of articles that have been faxed or are from electronic sources (such as a cd rom or website); and
- Where a member has included a work in CAL's DCM or DDS licence schemes, the member who included the work, and has warranted that they control the relevant rights in that work, in the scheme will be nominated as the recipient.

## **21. Undistributed money is held in Trust**

All money allocated for copying of works as part of a distribution is held in trust until it is distributed to the relevant member.

Any interest earned on money held in trust is returned to the general fund for inclusion in the amount available for distribution for the period in which the interest is received. For this reason CAL does not pay interest on money held in the trust account.

For example, interest earned in 2001 on undistributed money will be included in the calculation of the amount available for distribution from licence fees received in 2001.

Please refer to section 9.

## **22. Entitlement to claim money from CAL's distributions**

CAL's Constitution provides that distribution payments can only be made to members.

Members are entitled to claim money from CAL's distributions when their works appear in the copying records kept for CAL.

Members must participate in the licence scheme the money was collected under to be entitled to claim the money shown on a Notification.

CAL contacts members who have been allocated money from a licence scheme they do not participate in to identify whether the member wishes to expand their participation in CAL's licence schemes and claim the money allocated for copying of their works. Please note this does not apply where the member has already advised CAL they want to exclude their works from a particular blanket licence scheme or in the New Media Licence Scheme and Copyright Clearance Service.

Where money is allocated to non-members they are contacted and invited to apply for membership and claim the amounts allocated for copying of their works.

## **23. Minimum payment limit**

CAL holds money for a rightsholder until the amount they are entitled to claim exceeds \$50.00 (\$200.00 for non-residents of Australia).

## **24. Notification to members of amounts they are entitled to claim**

Members are sent a Notification advising them of the amounts they may be entitled to claim from CAL's distributions. The Notification is based on information provided by licensees and where available sets out details of the:

- title of the works copied (including article and chapter names, page numbers, volume and edition if provided);
- imprint (publisher);
- name of the author(s) and/or visual artists;
- number of copy pages;
- page rate;
- amount payable for each record;

- source of the money (for example statutory licences or other collecting societies);
- licence scheme the money was collected under (for example schools); and
- distribution pool (for example secondary schools) the money was collected under.

## **25. Additional information provided to members about copying of their works**

CAL can, on request, provide general information about the copying of a member's works. For example, CAL will advise a member of the states where the copying surveys on which the distribution was based were conducted.

CAL does not disclose information about:

- the individual institution that copied a work; and
- the location of surveys which are currently in progress

CAL has adopted this policy to protect the integrity of the surveys and to promote full disclosure of the works copied by the licensees participating in the survey.

## **26. Claim Forms**

Members claim the amount shown on the Notification by signing a Claim Form, which states the member:

- controls the works listed on the Notification; and
- is entitled to claim the amounts listed on the Notification.

The member also:

- agrees to share the amount claimed with any other rightsholder entitled to a share of the amount claimed within 60 days of receiving CAL's cheque; and
- indemnifies CAL against any and all claims (including full legal costs and disbursements) made against CAL in relation to any or all of the amount claimed.

Members are not entitled to claim money from a distribution for any works they do not control.

Members will not be required to sign a Claim Form where the amount allocated to them represents their share of the amount allocated under another collecting society's distribution rules. In these cases CAL will send a cheque to the member once the amounts received are ready for distribution.

## **27. Processing of Claim Forms and sending a cheque**

On receipt of the completed and signed Claim Form, CAL processes the payment and sends a cheque (bank draft or telegraphic transfer for non-residents) to the member.

Members must return the original Claim Form before a distribution payment can be processed.

## **28. Resolving queries about Claim Forms**

CAL will contact members to resolve any queries about the amount claimed. Queries less than \$50.00 will, as a rule, be resolved over the phone. Where the amount in question is greater than \$50.00 the Claim Form will normally be returned to the member for correction.

## **29. Splitting of distribution payments**

As a rule, CAL allocates all money for copying of a work to one rightsholder. That rightsholder is required to share that amount with any one else entitled to a share within 60 days of receiving CAL's cheque.

Where this is not possible, for example if the other rightsholders cannot be located, members can apply to CAL to split the payment in accordance with the agreement between the rightsholders.

## **30. Searches of copying records from previous distributions**

Members are entitled to request a search of records from previous distributions to determine if any money for use of their works, in which they hold the rights, has been allocated or paid to another member of CAL in accordance with the Scheme of Allocation.

This information will also be provided to non-members if they hold the rights. Prior to providing this information, CAL will seek confirmation that the person or company requesting the information is a rightsholder in the works and is entitled to receive the information about the payments.

CAL will, as a matter of courtesy and to provide transparency, notify the member who received the payment of the information provided.

## **31. Surveys of payments to secondary recipients**

CAL may, from to time, request that members provide details of any payments made to secondary recipients.

For example, CAL may ask a publisher to provide details of amounts paid to authors or to any other rightsholders in the works.

## **32. Recovery of overpayments**

CAL will ask members to repay any overpayments they receive from CAL's distributions. Where possible these repayments will be effected from future distribution payments.

## **33. Dispute resolution**

In the event of a dispute between members as to entitlement to claim money from CAL's distributions for copying of a work, CAL will, on notification of the dispute hold any money allocated for copying of that work pending resolution of the dispute by the members.

If the members are unable to resolve the dispute CAL offers the members access to a dispute resolution mechanism by way of a binding referral to an independent expert. All parties to the dispute must agree to the referral. They must also agree to bear their own costs and that the decision of the independent expert will be binding.

The scope of the determination will only be in relation to entitlement to claim money from CAL's distributions.

### **34. Ex-gratia payments**

CAL's Board of Directors can elect to make payments to members who can establish substantial copying of their works that has not been identified by the copying records.

To make an ex-gratia claim members are required to provide a statutory declaration setting out the details of the work copied including pages copied, number of copies made as well as where the copies were made. Members will also be required to supply evidence the copies were made under one of the licences managed by CAL.

For example, CAL would need evidence a copy was made under the statutory licence rather than under a fair dealing provision or a direct licence from the rightsholder.

In determining whether an ex-gratia payment should be made the board will take into account payments from previous distributions.

## **Contact CAL**

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Website: [www.copyright.com.au](http://www.copyright.com.au)

## **Useful information**

### **Stakeholder Relations**

Membership is the key contact point for enquiries by CAL members or about becoming a member. The department maintains the information which links the works in our database with who owns the work, as well as updating details of all our members. Payment to members is managed by this department.

General Enquiries Email: [memberservices@copyright.com.au](mailto:memberservices@copyright.com.au)

Payment Enquiries Email: [distrib@copyright.com.au](mailto:distrib@copyright.com.au)

### **Distribution Management**

Distribution calculates the amount of money available for distribution to members whose works have been copied. Payment to members is managed by this department.

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