

# Distribution Policy & Rules



## Introduction

This document sets out the agreed business policy and rules to manage the distribution of licence fees collected by ESMAA on behalf of its members and affiliated CMOs.

This document is a working document and will be revised and developed over time to reflect new areas of licensing that ESMAA becomes active in and the need to set rules for the distribution of these new licensing revenues and respond to the experience we acquire from completing distributions.

‘Members’ means writers and publishers and record labels which are direct members of ESMAA.

‘Affiliated CMOs’ means PROs, MLCs and other types of CMO which have put in place representation agreements with ESMAA for ESMAA to license their rights and repertoire.

ESMAA’s distribution policy and rules will reflect the broad range of Members and CMOs and rights that it licenses from time to time, covering composer/author, music publisher and record label mechanical/reproduction and performing rights.

## Document Version

This is version 1.3 of ESMAA’s ‘Distribution Policy and Rules’ document.

## Effective From

The distribution policy and rules will be effective from and first implemented in ESMAA’s first distribution, successfully distributed at the end of April 2021.

## Approved By

Hussain S. Yoosuf

Founder/ President

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## 1. Guiding principles and standards

ESMAA's guiding principles in setting its distribution policy and rules are:

- (1) To treat the rights and repertoire of all Members and Affiliated CMOs on a fair and equal basis;
- (2) To process data and distribute royalties accurately;
- (3) To ensure that royalties are distributed in a timely manner;
- (4) To be transparent in the processes, rules, deductions and communication of royalties distributed;
- (5) To carry out distributions in a cost-effective way and ensure that the value of licence fees distributed to rights owners is maximised and not subject to delay or withholding of taxes;
- (6) To commit to ongoing and regular review and update and improvement of its distribution policy and rules.

ESMAA's distribution policy and rules have been built with reference to the following:

- (a) ESMAA's Business Plan of July 2020.
  - (b) CISAC's 'Binding Resolutions for Musical Societies' published on 15<sup>th</sup> November 2018.
  - (c) CISAC's 'Distribution Rules and Methods Template' document for members and provisional members and published on 30<sup>th</sup> March 2017.
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## 2. Distribution Policy & Rules review

ESMAA has a commitment to regularly review, update and improve upon its' distribution policy and rules.

It will do this from time to time to reflect and respond to:

- (1) Changes in UAE legislation or ESMAA's trade licence which require ESMAA to follow certain procedures and/or requirements to remain compliant;
- (2) Key changes in licensing terms which mean that existing relevant distribution policy and rules need to be amended to fulfil the benefit and purpose of those changes;
- (3) The addition of new service types of licensing agreement for which there are no appropriate distribution policy and rules in place and to be carried out in advance of the first distribution date;
- (4) Changes to the availability or quality of reporting data from a licensee and/or licensing service type which means that the published distribution policy and rules commitments cannot be met;
- (5) And in any event, a full review at least every 24 months.

### Approval process

Distribution policy and rules reviews, updates and changes will be carried out by the Distribution Committee and approved by the ESMAA Board.

### Implementation and communication

Changes to the 'Distribution Policy & Rules' document will be implemented at the next relevant distribution date and communicated to Members and Affiliate CMO's in advance by email and/or via the 'Distribution Policy & Rules' site in the BackOffice portal.

### 3. Distribution Cycles and Timelines

ESMAA's standard distribution cycle for all licensing service categories is set out below:

4 times a year in January, April, July & October.

Each distribution will be in relation to licence fees collected for the calendar quarter two quarters prior (example, April Year X will be in respect of the period October to December Year X-1).

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## 4. Basis of distribution models used

For ESMAA to make a distribution, 2 key elements are required:

- **Royalty:** The revenue collected from licensed users of music
- **Usage Data:** Music usage information from the licensed user
- **Repertoire Data:** Works and agreements data from the copyright owners

Where not otherwise available via automated music recognition technology, licensees are required to report the musical works and/or sound recordings that they have used, i.e., played on radio or at a live concert etc. to ESMAA. This data is processed through ESMAA's distribution system and matched against the worldwide repertoire of works held on the ESMAA database. ESMAA identifies the copyright owners of each musical work and/or sound recording using this information together with information provided by its members, affiliate societies and third parties and calculates the royalties due.

As per CISAC Professional Rules, where feasible, ESMAA endeavors to pay royalties directly on the basis of the actual musical works and/or sound recordings performed or broadcast. However, in some cases, the cost of administering the data received will exceed the sum of royalties collected. Therefore, there are a number of different distribution methods which ESMAA uses to distribute royalties in an equitable manner.

### Census

This is the preferred basis for distribution. Royalties received from an individual customer are distributed 100% across the music used and reported by that customer.

### Sample

Where a census distribution is not feasible, ESMAA may distribute royalties from an individual customer using a representative sample analysis of its music usage. The sample rate is set at a minimum sample of X days per year. Once a sample rate has been established, days are pro-rated across the relevant distributions, and selected at random from within each distribution period. All logs from performances on a sample day will be collected and processed.

### Analogies

If sufficient data is not readily available, an analogy-based distribution method can be used. Using this method, royalties are distributed using statistically valid data which reflects current patterns of music use. The data is not obtained directly from the licensee. The type of data which is used can include representative surveys, music sales chart, broadcaster transmission logs etc.

### Survey

This is where royalties are distributed by reference to a representative survey of music.

## 5. Standard Methodology

ESMAA's approach will be to "follow the fee" – we will take the license fee charged for the use of a specific set of rights and repertoire and deduct ESMAA's commission, then match the relevant data usage against that remaining fee and apply the appropriate distribution rules.

In order to distribute royalties, a value per usage needs to be calculated. There are 2 different methods of calculating this value:

### 5.1 Duration Basis

The net royalty for a distribution pool is divided by the total number of seconds of music performed in the distribution period to calculate the value of music per second for that particular distribution pool. This per second point value is then multiplied by the reported number of seconds to calculate the royalty value for a particular work performance in that distribution pool.

For example:

Total net royalty paid by "Station 1" for distribution period	€150,000
Total number of seconds of music used by "Station 1" within distribution period	8,000,000
Point Value (Value per second) - i.e. Total net royalty ÷ Total number of seconds	€0.018
Total seconds (total duration) of "Song A" performed on "Station 1" within the period	4,000
Total royalty due to "Song A" from "Station 1" - i.e. Total seconds X Point Value	€72

### 5.2 Per Play Basis

The net royalty for a distribution pool is split equally across all musical works which are performed.

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For example:

Total net royalty paid by “Promoter 1” for an event	€8,000
Total number of songs performed on the set-lists at that event	25
Point Value (Value per play) - i.e. Total net royalty ÷ Total number of songs	€320
Total number of performances of “Song A” at the event	2
Total royalty due to “Song A” from this event - i.e. Total plays X Point Value	€640

### 5.3 Broadcast Time-of-Day Weighting Formula

Distribution of revenue from radio and television broadcast sources will be given a weighting to reflect the audience size for the time of day (e.g. peak/off-peak) of the broadcast.

We are currently taking guidance on how to set this up so that it is appropriate for the UAE and other Gulf State markets and will further update this section once the approach has been agreed.



## 6 Matching Process

The standard approach will be to attempt to auto match the reported musical work and/or sound recording to a copyright entry in the ESMAA Copyright Database owned or controlled by a Member or Affiliate CMO. This auto match process will be carried out using common identifiers like ISRC numbers, song title and composer and/or publisher details, song title and recording artist.

For subsequent distributions of a licensee's licence fees, we will also use "memory" of prior matches.

Where there is no match, the usage becomes an "unmatched" exception, and we will use further matching tools, including human 'manual' matching, in an attempt to make a correct match.

We will continue this process until an agreed pre-set distribution processing "cut-off" date, those matched will be distributed and those which are "unmatched" will be carried forward and treated as unidentified works and/or sound recordings and/or uses (see 7. Unidentified Works & Recordings and Uses)

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## 7 Unidentified works, recordings and usages

Where a usage has been matched to a work and/or recording which had insufficient documentation, i.e. not all rights holders can be identified, ESMAA will distribute the work and/or recording according to CISAC's "Insufficient Documentation" rule. There are two potential scenarios:

- (a) If one of the rights holders is identified as a Member of an Affiliate CMO, ESMAA will forward all royalties for that work or recording to the affiliate society who will distribute according to their documentation. The affiliate society in return will provide ESMAA with correct documentation for the work or recording so that ESMAA can distribute correctly in the future.
- (b) If one of the rights holders is identified as a Member then the royalties for the work or recording will remain undistributed and ESMAA will contact the member for documentation for the work.

ESMAA endeavors to identify and distribute on all music usages which are, at least in part, owned or controlled by a Member and feature in its distribution. Unidentified uses are reported music usages which cannot be matched to any documented works and/or recordings by ESMAA. This may be due to reasons such as those listed below:

- E.g. Insufficient information from a member or affiliated society
- E.g. Cue sheets for the film/programme could not be sourced by the society
- E.g. Unmatched arrangements of public domain works

As no rights holders are identified, these uses cannot be distributed via the "Insufficient Documentation Rule". Unidentified uses are placed on ESMAA's unidentified uses file which is available to Members and Affiliated CMOs. Members and Affiliate CMOs have 3 years from the date of the original distribution to claim unidentified uses.

No revenue is reserved for unidentified uses. Claims for unidentified uses are funded from future revenue for the same distribution pool. The claim value which is listed on the unidentified uses file is an estimated value of the amount the use would have earned if it had been paid in the original distribution.

## 8 Minimum payments, adjustments to payments and local payments

ESMAA will apply a minimum distribution payment threshold in relation to any distribution point.

Where the aggregated value of royalties from all processed and matched uses across all licensing sources in a distribution cycle is less than \$30.00 to a Member of Affiliated CMO, then no monies will be distributed.

Instead, the monies will be carried forward to the next distribution cycle and aggregated to monies identified for distribution then and this will continue until the aggregated sums to be distributed exceed the threshold.

Where a work or share has been paid incorrectly to a member or affiliate society, a debit/credit adjustment will be processed by ESMAA.

Debit/credit adjustments for members will only be processed against works or recordings or shares which featured on distribution statements issued within the previous 3 years. ESMAA applies a threshold of \$5.00 to debit/credit adjustments for members as the expense of processing adjustments below this value would outweigh the value of the adjustment.

A Member can request that royalties to be paid to an Affiliated CMO in respect of its' performing right share can instead be routed directly to the Member's MENA based business.

## 9 Distribution Costs

ESMAA will apply a standard deduction to all licensing income collected before the balance of license fees are processed for distribution.

This deduction is to cover the administrative costs of carrying out the distribution and operating the business.

The standard deduction that ESMAA applies is:

- 20% across all licensing sources
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## 10 Exclusions from distribution

ESMAA will only distribute to Members and Affiliate CMOs at the time of the identified usage and to the extent we either represent or are authorized to license the specific rights and licensing activity.

Furthermore, ESMAA does not license and therefore does not distribute on the following music usage:

- Performances of works that are in the Public Domain
  - Performances of Dramatico-Musical Works
  - Grand right performances
  - Performances in churches or places of worship
  - Speech
  - Sound Effects
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## 11 Disputes and duplicate claims

A counterclaim occurs where one or more rights owners and/or members dispute the ownership of a musical work. In line with international best practice, ESMAA's procedure for counterclaims in relation to the ownership of musical works is as follows:

Where a new rights holder's claim conflicts with an existing rights holder's claim the new rights holders will be required to submit documentation supporting their claim. Until this documentation is received by ESMAA, ESMAA will continue to pay the existing ESMAA rights holders. If supporting documentation is received from the new claimant then the first claimant has 60 days to support its claim. During these 60 days all royalties relating to the work or recording are held in suspense. If the first claimant does not respond within 60 days, they will be notified that their claim will be deleted if they do not respond to ESMAA within 60 days. Royalties will be held in suspense during these 60 days also. ESMAA shall only suspend the share which is in dispute.

ESMAA will not make any judgement regarding the value of the supporting documentation, but rather will check that information such as: term dates, territory, specific works/limitation of repertoire and that documents are signed and dated by all rights holders is included within the documentation.

If both claimants maintain a claim and can supply supporting documentation, then either claimant can request from the ESMAA board to have the works or recordings placed into dispute. Once works or recordings are placed into dispute, ESMAA will require either a court order or an agreement between the claimants to take the works or recordings out of dispute.

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## 12 Arrangements, translations and similar

*[In draft – subject to discussions with Back Office service provider]*

ESMAA will endeavor to distribute royalties for authorized adaptations and arrangements as accurately as possible in the context of the available usage reporting. For uses of an arrangement of a copyright musical work, ESMAA will not allocate a share to the arranger unless notified of this agreement and authorized to share in royalties by the rights holders.

Where an authorized translation of copyright lyrics is made, or lyrics are changed or substituted with the permission of the copyright owner, ESMAA will follow the share allocation notified by the copyright owners. In the absence of a share notification, the share allocated to the translator/sub-lyricist is 16.67%. This share is deducted from the shares of the composers and original lyricists proportionately. For example:

	Original Work	Translated Work
Composer	25%	16.67%
Author	25%	16.67%
Translator		16.67%
Publisher (Original/Sub)	50%	50%

Where the original lyrics are non-copyright, translated or substituted lyrics are handled as if there were original copyright lyrics.

As per CISAC's Binding Resolutions, where there is doubt or where it is impossible to establish which version has been used, all royalties shall be distributed to the rights holders of the original work. The sub-lyricist, arranger or sub-arranger is entitled to receive a share of royalties only if the authorized adaptation / arrangement is known to be used.

For performances of a copyright arrangement of a non-copyright work, ESMAA will credit the arranger as if they were the composer of an original composition.

## 13 Broadcasting – radio & television

*[In draft and subject to revision to reflect the structure of licensing agreements put together and the “follow the fee” approach to distribution methodology]*

Radio broadcasters are granted a blanket license which grants them permission to use all licensed repertoire for the licensed services and activities and subject to any exclusions and/or prior approval uses.

An outline on radio stations, with details of their distribution method, basis and frequency, can be found in the Appendices at the end of this document.

### 13.1 Weightings for Radio

Apart from duration, the allocation of monies will be given a weighting to reflect the audience size for the time of day (e.g. peak/off-peak) of the broadcast.

We are currently taking guidance on how to set this up so that it is appropriate for the UAE and other Gulf State markets and will further update this section once the approach has been agreed.

### 13.2 Division of Publishing/Neighboring Right Income

### 13.3 Broadcasting – Television

Please see comments at ‘Broadcasting – Radio’. We will be applying the same approach and are working on setting the detail of how we do this to accommodate a “time of day” weighting.

### 13.4 Alternatively

There might be instances where apart from duration, ESMAA will apply an additional weighting to radio performances. There would need to be full and justified set of reasons for this being the case. Therefore, all performances per second have the same value regardless of the type of use or when it was performed.



## 14 Public Performance – Public fountains, light displays and similar

The approach to attributing monies for distribution will be to “follow the fee” principal.

### **Mechanical (Reproduction) rights**

For these types of fountains/displays, license fees will have been specifically set for each work or recording used and this sum of money will be allocated for distribution to each work or recording as relevant.

Where a lump sum is set for the works or recordings used, then the allocation of licence fees will be equally split, with the option to add a weighing factor to reflect, for example, the duration of that work or recording.

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### **Performing rights**

Either of the two options set out under Mechanical rights can also apply to the allocation of distribution value for the performing right.

Where it is set out in the licensing agreement as a license fee parameter or where it is determined to be appropriate as a distribution differential (e.g. data is provided), then a weighting can be applied to reflect, for example, the number of times a work or recording was played.

### **Licensee distribution information**

A list of the current licensees with details of their distribution method, basis and frequency, can be found in the Appendices at the end of this document.

## 15 International Royalties

ESMAA has reciprocal agreements with affiliate societies to license usage of ESMAA's repertoire in other countries.

The collection and distribution policies of the affiliate societies will apply for repertoire usage within their territory. Revenue is collected by the affiliate society in the territory of performance from a wide variety of licensees covering all of its copyright music use. The affiliate society subsequently forwards royalties to ESMAA for the portion of the collected revenue it has identified as attributable to ESMAA members, along with sufficient information to enable ESMAA to identify the works and interested parties to pay.

All data submitted by affiliate societies is loaded into ESMAA systems for matching against a work or recording on the copyright database. The processes for matching, dealing with unidentified works or recordings and making distribution payments are then followed as set out in sections 6 – 8 of this document, to the extent relevant.

ESMAA distributes international revenue on a quarterly basis, usually at the first distribution after the revenue and data is received. The time period between performance and distribution is subject to the distribution timetable of the affiliate society.

## 16 Distribution Statements

ESMAA will produce a distribution statement for each Member and Affiliated CMO for each distribution cycle in which monies are distributed (i.e. above the minimum distribution value threshold).

The Statement will provide details of all the royalties to be paid through to the Member or Affiliated CMO in that particular distribution.

It will also include monies due from previously unmatched or late supplied data for prior periods and monies due from resolved disputes and claims and where the usage has been newly matched directly by the Member or Affiliated CMO.

The data fields captured are:

- Type of service (e.g. 'Broadcast radio)
- Licensee name
- Specific service name
- Right licensed
- Period
- Territory
- Song title and writers (or artist as applicable)
- Basis of distribution
- Value (and currency)
- Deductions
- And others tbc.

The standard distribution statements used for all Members and Affiliated CMOs will be:

- (i) CRD v2.1 for CMOs (unless otherwise requested);
- (ii) CSV format

Distribution statements will be available via the specific Member or Affiliated CMO log in on the ESMAA systems in advance of the distribution date.

The statement will be in electronic form and there will be options to archive past statements and the ability to download.

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## 17 Distribution Policy & Rules queries

Queries can be submitted to Ceasar Apostol, Data & Distributions Manager (ceasar.apostol@esmaamusic.com) and ESMAA will respond within 10 days.

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## Appendix - Distribution details per radio licensee

- (Example) Arab Radio Network

<b>License Type</b>	A - Annual Blanket	<b>Distribution Method</b>	Census & sample – depending on value of licence fee attributed to station.
<b>Number of Stations</b>	11	<b>Distribution Basis</b>	Weighted duration
<b>Distribution Frequency</b>	At least twice a year	<b>Processing Threshold</b>	None

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## Appendix - Distribution details for public installation (fountain etc.) performance licensee

- The Palm Jumeirah – Palm Fountain, UAE

<b>License Type</b>	A - Annual Blanket	<b>Distribution Method</b>	Census.
<b>Licensed rights &amp; repertoire</b>	Reproduction and public performance for works and recordings.	<b>Distribution Basis</b>	Payment of specific licence fee agreed for each rights usage, pro-rated for usage period.
<b>Distribution Frequency</b>	Quarterly	<b>Processing Threshold</b>	None