

**ERA DISTRIBUTION POLICY  
(Including ERA Policy on non-distributable amounts)**

**The Members of ERA have approved adoption of amendments to this Policy in General Meeting on 23<sup>rd</sup> September 2021**

**1. 1 Sources of revenue**

ERA applies its Mandates to support operation of a copyright licensing scheme known as the ERA Licence.

Educational Establishments within the United Kingdom of Great Britain and Northern Ireland are able to take out ERA Licences.

By agreement with ERA Members and the authorities responsible for educational establishments within the Isle of Man and the Channel Islands, ERA Licences are also granted for the benefit of educational establishments within the Isle of Man, Jersey and Guernsey.

This policy sets out the basis upon which ERA distributes licensing revenue from the issue of ERA Licences and any income arising from the investment of such licensing revenue after deductions applied in accordance with the terms of this Policy, ERA's Investment Policy and ERA's Policy on Deductions.

**1. 2 Objective Criteria for establishing shares for Distribution**

Members at the date of adoption of this Policy have acknowledged the results of a review of the nature of ERA Membership Categories and the allocation of shares to each Category of Membership which was undertaken by agreement of the ERA Membership in 2008. This allocation shall remain in place until alternative provisions are established as provided under the Constitution of ERA.

Applicants for ERA Membership who meet the ERA Membership Criteria provided under the ERA Articles of Association are eligible to become Members of ERA. When applying for ERA membership, in accordance with the Articles of Association of ERA, prospective members identify the Category of ERA membership which most accurately reflects the nature of the majority of rights within the repertoire of the Member to be mandated to ERA and negotiate their appropriate share from the relevant Membership Category.

ERA Members can agree to review the overall allocations provided in this Distribution Policy as provided by the ERA Articles of Association (which may also involve referral to a Dispute Resolution Procedure as defined).

## **2. Deductions**

The deductions which may be made and retained by ERA from sums otherwise payable to an ERA Member under the ERA Distribution Policy are:-

An appropriate share of ERA's management fees and reasonable allocations to reserves as is approved by ERA Members in accordance with the Policy on Deductions. All investment income will be offset against management fees in accordance with ERA's Investment Policy.

Fees or commissions charged by ERA or its sub-agents and agreed by the Member for any additional tasks specifically undertaken for the Member at its request.

Sums which are to be paid to ERA as a result of the Member being in breach of the warranties and undertakings which have been given to ERA by the Member in mandating ERA to act on its behalf.

Withholding of any taxes required to be deducted or withheld under the laws applicable within the United Kingdom or within any country in which relevant fees or other sums become payable to ERA.

## **3. Authorisation of Distributions**

At least twice during each calendar year, but generally on a quarterly basis (accounting period), the Board reviews the royalties and fees which have been both received and earned from application of the ERA Licence (Licensing Revenues) and from application of ERA's Investment Policy.

Fees shall be earned by reference to ERA Licences held by the following User Groups:

- Funded schools (primary and secondary)
- Independent schools
- Educational Establishments of Further Education
- Educational Establishments of Higher Education
- Other Educational Establishments (such as english language schools).

Following review and consideration, revenue earned during an accounting period after allocation of funds in accordance with ERA's Investment Policy and Policy on Deductions, the Board shall identify the total amount which the Members shall be asked to approve for distribution ("Net revenue") together with the date of the proposed distribution to be made as provided in this approved Distribution Policy.

Once the Board identifies the amount of a proposed distribution, ERA shall give to all relevant Members appropriate notice of a proposed resolution to approve the distribution and the date upon which the distribution shall be made.

Following approval by ERA Members, by means of an Ordinary Resolution, of a distribution to ERA Members, ERA shall remit to Member(s) such royalties, fees and other monies as have then been agreed due between the Member and ERA within the approved distribution.

#### **4. Shares of Distribution – Category level**

There are five categories of ERA membership.

Category 1 – Broadcasts

Category 2 – Literary, dramatic, musical and artistic works

Category 3 – Performers

Category 4 – Sound Recordings

Category 5 – Films

Each Member of ERA is either a collective management organisation, society, guild, association or other body which is a legal entity and which is either (i) a substantial copyright owner or represents copyright owners in respect of a substantial number of works in which copyright or right in performances subsist, or (ii) represents a substantial number of copyright owners and which meets the Membership Criteria set out in the Articles of Association of ERA.

With effect from the date of adoption of this policy, the Members of ERA have agreed and have instructed ERA to apply a specified Net revenue percentage allocated to each of the five Categories of ERA membership calculated in accordance with the objective criteria set out in 1.2.

For this purpose “Net revenue” is the amount that ERA Members approve as the total sum due to be distributed and paid to ERA Members when approval for a relevant distribution is confirmed.

The agreed Net revenue percentage allocated to each Category of ERA Membership shall be applied for the purposes of any distributions approved by ERA Members unless or until ERA Members shall agree to vary the Net revenue shares in place up to the point of such further agreement.

The Members within each Category of ERA Membership are listed in Appendix 1.

The Net revenue percentage agreed applicable to each Category of ERA Membership is specified by Category in Appendix 1.

## **5. Shares of Distribution within Categories of Membership**

The Members of ERA have delegated to the Members in each Category of Membership the right to agree between the members in the Category, the way in which the total Net revenue percentage for the Category is split between the members of the Category.

The agreed splits are set out in written agreements between ERA and the ERA Members concerned (Category Split Agreements).

ERA is required to provide that any distributions approved and made will allocate and pay the Net revenue percentage agreed for a Category of ERA Membership in the shares allocated to each member of the Category as set out in the relevant Category Split Agreement.

No changes to the revenue shares specified in any Category Split Agreement shall be made or applied unless ERA and all current ERA Members who were party to a Category Split Agreement shall agree and enter into a revised agreement to approve the terms or terms shall be put in place pursuant to approved Dispute Resolution Procedures being applied in accordance with the Articles of Association of ERA.

## **6. Policy on the use of Non-distributable Amounts**

ERA only licenses the use of works and performances which fall within the definition of ERA Repertoire under the ERA Licence.

The copyright exception and limitation provisions in s35 and paragraph 6 Schedule 2 Copyright, Designs and Patents Act 1988 apply for the benefit of educational establishments making use of rights falling outside ERA Repertoire.

Additionally, the proportions in which ERA revenue is allocated amongst its Members are determined by agreement between the Members as reflected in this approved ERA Distribution Policy. ERA distributions are therefore not affected by any uncertainties over the ownership or control of any work or performance or uncertainty over whether any rights subsist in the same.

ERA is therefore able to allocate all distributable revenue to its Members as owners of ERA Repertoire in accordance with the approved ERA Distribution Policy without provision for claims from owners who are not ERA Members or represented by ERA Members at the time when approval for distributions is confirmed.

A policy for the use of non-distributable amounts is therefore not required or relevant to ERA activities.

## **7. Data reporting for use of ERA Repertoire**

ERA has entered into a number of agreements with companies who provide recording or exchange services for educational establishments.

These agreements (Third Party Agreements) enable the service providers to make and store licensed ERA Recordings for and on behalf of educational establishments.

The Third Party Agreements also provide for the service providers to supply reports to ERA about the titles of the ERA Recordings made and stored within agreed services (Third Party Reports).

The Third Party Reports are not a complete picture of levels of use of ERA Recordings by ERA Licensees, nor do they include breakdowns of identifiers relevant to underlying works or performances which are fixed within individual ERA Recordings. However, the usage data supplied may be influential in being indicative of use by Licensees.

Therefore, to the extent practical, and within objective criteria supporting application of ERA's Distribution Policy, the ERA Board has authorised the setting up of a Data Group to meet and review the content of Third Party Reports and make suggestions as to the ways in which these may be developed to assist ERA Members in applying their own internal rules for allocation of monies paid to them under ERA's agreed Distribution Policy.

Rules governing meetings of the Data Group will be approved by the ERA Board and reviewed from time to time.

## **8. Statements requesting invoices for payments**

For each accounting period for which ERA Members shall have approved a distribution (and not less than once a year) ERA shall send a statement in the form of a request for invoice setting out in detail the royalties fees and other sums to be distributed to the Member on a specified Distribution Date.

Statements will include:

Contact details for the Member as held by ERA.

The Net revenue percentage and amount attributed to the Member in the proposed distribution as provided in this Distribution Policy and any current and relevant Category Split Agreement.

The share of Net revenue percentage proposed for distribution to the Member by reference to their Category of ERA Membership and to User Group.

The period during which the Net revenue distributed was earned against ERA Licences.

A date by which an invoice for the specified payment must be received by ERA to enable payment to be made on the agreed Distribution Date.

#### **9. Invoicing for payments due under Agreed Distributions**

ERA Members will be required to submit to ERA an invoice for payment of sums stated as due in Statements sent to the ERA Member (together with any relevant VAT).

Subject to receipt of an invoice from an ERA Member in appropriate form, ERA will pay the sum approved for distribution on the specified Distribution Date.

Any changes to this Distribution Policy will be first discussed and agreed by the Board before being put to the ERA Members for approval by Special Resolution in general meeting.

Educational Recording Agency  
5th Floor, Shackleton House  
Hay's Galleria  
4 Battle Bridge Lane  
London SE1 2HX

## Appendix 1

### **Categories of ERA Membership ERA Members within each Category of ERA Membership Percentage of Net revenue allocated to each Category of ERA Membership**

<u>Category 1</u>	(Net revenue percentage	37.98%)
BBC Worldwide Limited		
Channel 5 Broadcasting Limited		
Channel Four Television Company Limited		
The ITV Network Limited		
Sianel Pedwar Cymru		
560 Media Rights Limited		
AGICOA		
<u>Category 2</u>	(Net revenue percentage	27.25%)
Authors' Licensing and Collecting Society Limited		
Design and Artists' Copyright Society		
Mechanical Copyright Protection Society Limited		
The Performing Right Society Limited		
Directors UK Limited		
PICSEL Limited		
<u>Category 3</u>	(Net revenue percentage	20.85%)
Equity		
Musicians' Union		
Incorporated Society of Musicians		
<u>Category 4</u>	(Net revenue percentage	4.35%)
BPI (British Recorded Music Industry) Limited		
Phonographic Performance Limited		
Radio Independents Group		
<u>Category 5</u>	(Net revenue percentage	9.57 %)
AGICOA		
FOCAL International Limited		
Open University Worldwide Limited		
	Total	100%