

**COPYRIGHT LICENSING LIMITED (t/a Copyright Licensing New Zealand - CLNZ)
DISTRIBUTION POLICY
As Approved at the Company's AGM held 22 May 2019**

1. INTRODUCTION

Copyright Licensing Ltd (CLNZ) receives revenue from domestic licensing schemes on behalf of publishers and authors worldwide. It also receives licensing revenue from overseas Reproduction Rights Organisations (RROs) and Collective Management Organisations (CMOs) on behalf of publishers and authors in New Zealand for copying and other uses¹ of their works overseas.

The term *distribution* is used by RROs and CMOs to distinguish payments of net licensing fees that are made to copyright owners, from other payments the RRO/CMO may make in the course of its operation. This Distribution Policy reflects the rules for receipt and allocation of monies set in CLNZ's Constitution and has been set by CLNZ's Board of Directors to ensure that distribution of licensing revenue is:

- timely;
- tied to usage;
- fair and equitable;
- consistent and even handed:
 - between groups of Rightsholders (e.g. publishers, authors, visual artists, domestic and overseas Rightsholders);
 - between licence pools (with consistent allocation of costs); and
 - from year to year.

During 2019, CLNZ will transition Rightsholders from Mandate Agreements to a new *Grant of Rights and Portal Services Agreement*. This transition will take place in conjunction with the implementation of an online Copyright Owners' Portal, through which a Rightsholder will manage their works and claim any Distribution Payments.

2. LICENSING REVENUE

CLNZ represents publishers, authors and visual artists whose works are copied under CLNZ licensing schemes and copyright clearance services operating in New Zealand. It has agreements with New Zealand publishers, authors and visual artists and reciprocal agreements with RROs and CMOs overseas that provide the repertoire that can be copied under its licensing and clearance services.

CLNZ receives licensing revenue from RROs and CMOs overseas on behalf of New Zealand publishers and authors for copying of their works overseas under similar licensing schemes and clearance services.

¹ Two examples are Public Lending Right payments and Equipment Levy funds

Revenue from CLNZ's blanket licensing schemes is held in different revenue pools (e.g. Universities, Schools, Business etc.) and electronic and physical data collections are carried out in each sector to gather bibliographic data on the works being copied under licence for distribution purposes.

Revenue from CLNZ's Copyright Clearance Services is held separately and licensees provide CLNZ with records of all copying carried out under licence for invoicing purposes.

3. DISTRIBUTABLE FUNDS

3.1 Distributable Funds

At the end of each accounting period (calendar year), net revenue from CLNZ's licensing schemes is transferred to appropriate distribution pools and set aside for distribution. Such funds are held in interest-bearing Term Deposit accounts.

3.2 Net operating costs

Net operating costs are arrived at by offsetting interest and revenue from administrative charges against CLNZ's operating costs.

3.3 Deductions from Blanket Licensing Schemes

Each blanket licensing revenue pool is offset by a proportionate share of CLNZ's net operating costs, a contribution to the Cultural Fund and a contribution to the Legal Reserve Fund (formerly known as the Indemnity Fund). The balance is declared for distribution (Distributable Funds).

3.4 Administrative charges

CLNZ deducts a 20% charge for costs incurred in the distribution of revenue from copyright clearance services and overseas RROs and CMOs.

The revenue received from these charges is offset against CLNZ's net operating costs which are allocated proportionately against the revenue from blanket licensing schemes.

3.5 Cultural Fund

Each year 2% of revenue from blanket licensing schemes is allocated to a separate account for cultural and/or social purposes conducive to the interests of publishers and authors in line with CLNZ's Constitution.

3.6 Legal Reserve Fund

Each year 1% of revenue from blanket licensing schemes is allocated to a separate account to fund legal actions (e.g. High Court cases, Copyright Tribunal cases and indemnity claims). This

allocation is over and above general legal expenses that are budgeted for and incurred in the normal course of CLNZ's business.

3.7 Interest

All money allocated for distribution is held in interest-bearing Term Deposit accounts until it is distributed to the relevant Rightsholders. Any interest earned on money held in trust is offset against operating costs incurred in the year the interest is earned.

3.8 Trust period

Distributable Funds for each accounting period are held upon trust for a period of at least five years from the end of the accounting period in which the monies were received, or such further period as the Board may determine.

4. ALLOCATION OF DISTRIBUTABLE FUNDS

4.1 Calculation of the amount allocated

CLNZ's distributions are based on the copying records provided by licensees and overseas RROs. Copying records are obtained from some licensees via data collections and from other licensees via usage reports that are provided in digital formats. Funds are allocated to copying records on a per page basis by dividing the distribution pool by the total number of copy pages in the copying records collected from each licence sector to calculate the page rate and then multiplying the copy pages for each record by the page rate:

$$\frac{\text{Sector Distribution Pool } \$}{\text{Total \# copy pages}} = \text{Page rate} \times \text{copy pages per record}$$

The allocation of revenue from copyright clearance services is based on copying records provided by licensees.

4.2 Attribution

All money allocated for the copying of a particular work is attributed to the publisher (whether mandated or not) of the work who is required to share the funds with third parties (i.e. authors, artists etc.) based on the contractual arrangements between them. The publishers sign a Warranty that they control the reproduction right to the work. Local representatives of overseas publishers are nominated as recipients before overseas RROs or CMOs. Where money is allocated to New Zealand publishers who have not signed a mandate with CLNZ they are given the opportunity to do so when they are advised of the allocation.

Where rights have reverted to the author, the money allocated for the copying of a work will be attributed to the author. Such authors may provide CLNZ with a mandate relating to such works.

Monies allocated to overseas Rightsholders are attributed to the RRO in their country where one exists. These funds are distributed to the RROs that have signed Reciprocal Agreements with CLNZ involving the transfer of licensing fees between them (A Agreement) but not to RROs that have signed a repertoire only agreement (B Agreement). RROs with B Agreements are notified of the monies allocated to them and these funds are held in trust for the trust period.

5. UNIDENTIFIABLE AND UNIDENTIFIED COPYING

Often the copying records provided by licensees do not clearly identify the work copied. These records are divided into two broad categories – unidentifiable and unidentified.

5.1 Unidentifiable copying

In this instance 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. Although unidentifiable copying is recorded as copyright material copied for the purposes of assessing the volume of copyright material copied under a particular licensing scheme, these records are excluded when distributable funds are allocated for distribution.

5.2 Unidentified copying

In this instance, 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 CLNZ can identify the work but cannot identify or locate the Rightsholder. Money is allocated to these records and efforts are made to identify the work and the Rightsholder so that the money can be distributed within the trust period.

If CLNZ is unsuccessful in identifying the work and/or the Rightsholder the money may be transferred to an appropriate distribution pool at the end of the trust period for redistribution.

6. WORKS EXCLUDED FROM DISTRIBUTION

The following works are excluded from CLNZ's distributions:

- Works that can be identified as public domain (out of copyright);
- Works of Rightsholders who have elected to exclude their works from CLNZ's licence schemes;
- Works of Rightsholders who have advised CLNZ that their works can be copied freely without payment of a licence fee. These are referred to as copyright-free. In this instance CLNZ 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;
- Unidentifiable copying.

All works produced by or on behalf of a Government Department or Minister of the Crown will be excluded from CLNZ's distributions unless the Government Department or Ministry has provided CLNZ with a mandate to include such works.

7. DISTRIBUTION OF DISTRIBUTABLE FUNDS

Distributable Funds available for distribution from the previous accounting year are allocated for distribution in the last quarter of each year. Revenue from a number of different licensing schemes including revenue received from the Copyright Clearance Service may be included in notifications provided to Rightsholders.

Distribution of licensing fees received from some sectors may be carried forward and accrued until there are sufficient funds to distribute and/or sufficient data on which to base the distribution.

7.1 Timing of Distribution

Monies allocated to Rightsholders from Distributable Funds must be distributed to Rightsholders as soon as practicable after distributable funds have been allocated. This is generally within 9 months after the end of the calendar year in which the licence fees were generated.

7.2 Distributions to RROs

Funds allocated to overseas RROs which have an A agreement with CLNZ will be distributed within three months of the annual distributable funds being allocated where the amount is more than \$200.00.

Funds allocated to overseas RROs which have a B agreement with CLNZ will be held upon trust for 5 years before being transferred to appropriate distribution pools for redistribution (held for trust period in case an A Agreement is entered into and funds are transferred).

7.3 Distribution to New Zealand Rightsholders

New Zealand Rightsholders are notified of the amounts they may be entitled to claim from Distributable Funds. Information provided by licensees sets out details of the:

- Title of the works copied (including article and chapter names, page numbers, volume and edition if provided);
- Year of Publication
- Imprint (publisher);
- Name of the author(s) and/or editors;
- Number of copy pages;
- Page rate;
- Amount payable for each record;
- Distribution pool from which money allocated (or RRO, or Copyright Clearance Service).

Payment to New Zealand Rightsholders is made when an Authorised User of the Rightsholder finalises the claim process in the CLNZ Copyright Owners' Portal.

8. MINIMUM DISTRIBUTION AMOUNT

Rightsholders will be notified when distributable funds allocated to them have accrued during the trust period to:

- \$50.00 and over for New Zealand Rightsholders;
- \$200.00 and over for RROs.

At the end of the trust period any amounts below the following levels will be transferred into the appropriate distribution pool at CLNZ's discretion taking into account the provisions of paragraph 13:

- Mandated Rightsholders: \$50.00;
- Unmandated Rightsholders: \$100.00.

9. CLAIMING FUNDS ALLOCATED

New Zealand Rightsholders claim the Distribution Funds allocated to them via the online process in the Copyright Owners' Portal. Access to the Copyright Owners' Portal is provided to New Zealand Rightsholders who have signed the Grant of Rights and Portal Services Agreement. This Agreement outlines:

- The Grant of Rights from the Rightsholder to CLNZ
- The Rightsholder's responsibilities, warranties and indemnities
- CLNZ's responsibilities and obligations, including under the terms of this Policy

In circumstances where CLNZ considers it unreasonable or impractical for a Rightsholder to use the Copyright Owners' Portal to make a claim, the following process will apply:

1. The Rightsholder will be provided with a Notification detailing amounts CLNZ considers are owing to the Rightsholder.
2. The Rightsholder must provide a GST invoice (if GST registered) and sign a Copyright Owners Distribution Warranty and Indemnity form which states:
 - I/we will distribute to each author, illustrator, publisher and/or any other third party rightsholder the amount due to them in accordance with the terms of their agreement with me/us and undertake to advise them that the royalty has been generated from CLNZ Licenses.
 - I/we have the authority as owner of the copyright work or as agent for the rightsholders to receive the Total Amount Claimed.
 - The Copyright Owner/Controller will indemnify and hold harmless Copyright Licensing Limited against any and all liabilities incurred by Copyright Licensing Limited as a result of any third party bringing a claim or action or proceeding against Copyright Licensing

Limited for infringement of the copyright works listed on the corresponding Notification of Copied Works (NOCW) or claiming an interest in the Total Amount Claimed.

Where the claimant is:

- not registered for GST or is
- an estate or beneficiary of an estate

a letter stating that they own the rights to the work/s is required.

10. DISTRIBUTION OF LICENSING REVENUE RECEIVED FROM OVERSEAS RROS

10.1 Distribution to New Zealand Rightsholders

Licensing revenue received from overseas RROs and CMOs is to be distributed to New Zealand publishers or authors within 12 months of receipt by CLNZ where appropriate attribution records are supplied by the RRO or CMO remitting the funds.

10.2 Unattributable Overseas Revenue

Where no such records are provided, funds remitted will be placed into:

- the Cultural Fund; or
- as otherwise determined by the Board.

10.3 Distribution of Funds remitted in error

Funds remitted to CLNZ by other RROs or CMOs in error for works not owned by New Zealand Rightsholders are to be attributed to the correct Rightsholder and included in the distribution of New Zealand licensing revenue to overseas RROs. The usual administrative charge will be incurred and deducted from the amount redistributed.

11. EX GRATIA PAYMENTS

CLNZ's Board of Directors can elect to make payments to Rightsholders who can establish substantial copying of their works under a CLNZ licensing scheme that has not been identified by the copying records.

To make an ex-gratia claim, Rightsholders 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. They will also be required to supply evidence that the copies were made under a CLNZ licensing scheme and not under a fair dealing provision of the Copyright Act 1994 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.

12. DISPUTE RESOLUTION

Any dispute regarding an amount paid or payable to a Rightsholder must be made in writing by or on behalf of the Rightsholder and must give the name and address of the person or organisation making the complaint. The matter shall be referred to the CEO of CLNZ for determination. If the matter remains unresolved, it shall firstly be referred to the Board of Directors of CLNZ for decision. If the Rightsholder remains aggrieved, the matter shall be referred to the mediation of a mediator to be agreed by the parties or, where the parties cannot agree on a mediator within 14 days of a party referring a dispute to mediation, appointed by the Chairperson of LEADR New Zealand Incorporated or the Chairperson's nominee, whose decision will be final and binding upon the Rightsholder and CLNZ. The costs and expenses of the mediator shall be shared by the parties equally. Should mediation be unsuccessful, then such dispute may be referred by either party to arbitration of a single arbitrator appointed by the Arbitrators Institute of New Zealand or its nominee and the decision of the arbitrator shall be binding on the parties.

13. TRANSFER OF FUNDS FOR REDISTRIBUTION

At the end of the trust period, any undistributed funds will relate to one of the following categories:

- Unidentified copying;
- Allocated to Rightsholders CLNZ has been unable to locate;
- Allocated to Rightsholders who have not claimed the money; or
- The total amount allocated to the Rightsholder from all distributable funds is under \$100.00.

At the end of the trust period (or longer period as determined by CLNZ), after every reasonable effort has been made to correctly identify and locate the Rightsholders to whom monies have been allocated, undistributed funds may be transferred to appropriate distribution pools for redistribution where CLNZ considers that there is insufficient information available to the company to enable an equitable and accurate distribution. Such funds will be transferred without any further deduction of operating costs.