

# ICLA Distribution Policy

ICLA's Distribution Policy has been reviewed and updated to fulfil the requirements of the European Union Collective Rights Management Directive (2014/26/EU) and Ireland's implementation of that (SI 156 of 2016).

The Policy below was adopted by the Board in December 2016.

The Policy can be revised by the ICLA Board of Directors at any time in the future but must always follow the principals of:

- The Berne Convention
- National Treatment

## 1. INTRODUCTION

Irish Copyright Licensing Agency Ltd (ICLA) receives revenue from domestic licensing schemes on behalf of publishers and authors worldwide. It also receives licensing revenue from overseas Reproduction Rights Organisations (RROs) on behalf of publishers and authors in Ireland for the copying of their works overseas.

This Distribution Policy reflects the rules for receipt and allocation of monies set in ICLA's Constitution and has been set by ICLA's Board of Directors to ensure that distribution of licensing revenue is:

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

## 2. LICENSING REVENUE

ICLA represents publishers, authors and visual creators whose works are copied under ICLA licensing schemes operating in Ireland. It has mandate agreements with Irish publishers and authors and other Collective Management Organisations, and reciprocal agreements with Reproduction Rights Organisations overseas that provide the repertoire that can be copied under its licences.

ICLA receives licensing revenue from RROs overseas on behalf of Irish publishers, authors and visual creators for copying of their works overseas under similar licensing schemes and clearance arrangements.

Revenue from ICLA's blanket licensing schemes is held in different revenue pools (e.g. Higher Education, Schools, Business) and to the best of ICLA's ability and resources, sampling surveys are carried out in each sector to gather bibliographic data on the works being copied under licence as the basis for distributions.

### **2.1 Agency Agreements**

The Board may from time to time approve ICLA entering into agency agreement with third parties whereby ICLA distributes fees due to Irish rightsholders based on the distribution rules set by the third party.

## **3. DISTRIBUTABLE FUNDS**

### **3.1 Distributable Funds**

At the end of each accounting period (31<sup>st</sup> August), net revenue from ICLA's blanket 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 ICLA's operating costs with the aim of keeping those costs below 25% of licensing monies received in the relevant financial year.

### **3.3 Deductions from Blanket Licensing Schemes**

Each blanket licensing revenue pool is offset by a proportionate share of ICLA's net operating costs. The maximum deduction from any one pool is 25%. The balance is declared for distribution (Distributable Funds).

### **3.4 Administrative Charges**

ICLA deducts a fixed percentage for costs incurred in the distribution of revenue from overseas RROs as follows:

- Overseas licensing revenue: 12.5%

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

### **3.5 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.

### **3.6 Trust period**

Funds for unidentifiable copying for each accounting period are held upon trust for a period of at least six 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

ICLA's distributions are based on the copying records provided by licensees and overseas RROs. Where the copying records are obtained from sampling surveys carried out in each licence sector, money is allocated to copying records on a per page basis by dividing the distribution pool by the total number of copied pages in the copying records collected from each sector to calculate the page rate and then multiplying the copy pages for each record by the page rate:

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

### 4.2 Attribution

ICLA distributes licensing revenue for Irish-published works directly to authors and publishers in Ireland and, on behalf of visual creators, to IVARO for onward distribution. The division between these rightsholder groups is agreed by ICLA's Board of Directors and is currently 4% for visual creators, a 48:48 split for authors and publishers of books, 96% for journals, periodicals and magazines to the publisher.

From time to time, copying records may include works owned by rightsholders who have not mandated ICLA. They are included in allocations on the same basis as mandating rightsholders. Where money is allocated to Irish publishers and authors who have not signed a mandate with ICLA they are given the opportunity to do so when they are advised of the allocation.

Where rights have reverted to the author and ICLA has been notified of this fact, the money allocated for the copying of a work will be attributed in its entirety to the author. 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 ICLA 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. RE-ALLOCATION OF UNDISTRIBUTABLE MONIES

### 5.1 Re-allocation Policy

While ICLA always endeavours to allocate the correct share due to rightsholders for the use of their works, the information from the copying records provided by the licensees is not always sufficient to identify either the work or the rightsholder. Consequently ICLA undertakes considerable work to identify and contact the rightsholders concerned.

To account for those fees that remain unallocated even after this process, the following system is applied:

- Fees for published works for which ICLA receives no data identifying the works (non-title specific income) will be divided amongst all eligible rightsholders in equal share for payment in the following financial year.
- Fees for published works for which ICLA has no information identifying the rightsholders will be allocated amongst all eligible rightsholders in equal share.

### **5.2 Rightsholder research policy**

In accordance with statutory provisions concerning collective licensing, ICLA collects money on behalf of both mandating and non-mandating rightsholders. Using the available data identifying copied works, ICLA undertakes research to confirm the identity and location of non-mandating rightsholders. Once the rightsholder has been identified and located the necessary paperwork is sent to them to mandate ICLA and to exclude any or all their works from ICLA's licensing schemes. In case of non-responses, a due diligence process is followed that involves sending periodic follow-up communications to the rightsholder.

Any fees due to a rightsholder who has been identified but, following the due diligence process either a) has not been located or b) has been located and contacted but not responded, shall be considered as Undistributable Fees.

The Board shall from time to time determine the level at which due diligence is undertaken so that ICLA's operational costs do not adversely affect the level of ICLA's return to rightsholders and to ensure the research process is reasonable and proportionate.

### **5.3 Undistributable Fees**

Fees due to rightsholders that remain unpaid at the end of the due diligence process shall be considered Undistributable Fees. These shall be redistributed amongst rightsholders on a clear and equitable basis determined by the Board. The Board may at its discretion direct that a proportion of Undistributable Fees be used to improve the efficacy of collective licensing and distribution operations to the benefit of rightsholders.

Any substantiated claims by rightsholders who are located subsequent to the conclusion of the due diligence process will be met out of Undistributable Fees.

## **6. WORKS EXCLUDED FROM DISTRIBUTION**

The following works are excluded from ICLA's distributions:

- Works without a standard identifier (ISBN for books; ISSN for serial publications)
- Works that can be identified as public domain (out of copyright);
- Works of rightsholders who have elected to exclude their works from ICLA's licence schemes;
- Works of rightsholders who have advised ICLA that their works can be copied freely without payment of a licence fee. These are referred to as copyright-free and include "photocopiables", work published under the reuse of public sector information legislation and open access publications. In this instance ICLA 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 (where the information provided by the licensee identifies the work as copyright material but does not provide enough information about the work copied to enable the rightsholder to be identified).

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

## **7. DISTRIBUTION OF DISTRIBUTABLE FUNDS**

Distributable Funds available for distribution will be distributed within nine months after the end of the financial year in which the money was collected from licensees.

### **7.1 Timing of Distribution**

ICLA carries out four distributions per year, November, February, May and August.

### **7.2 Distribution to Irish rightsholders**

Mandating rightsholders are sent a payment by interbank transfer, or cheque where bank details are unknown, together with a statement of:

- The licence sector(s) from which the money has been allocated
- Where known, the details of the work(s) identified in sampling surveys, to include where possible:
  - Title of the works copied;
  - Imprint (publisher);
  - Name of the author(s) and/or editors.

### **7.3 Distributions to Overseas RROs**

Funds allocated to overseas RROs which have an A agreement with ICLA will be distributed within three months of being allocated where the amount is more than €500.

Funds allocated to overseas RROs which have a B agreement with ICLA will be held upon trust for six 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).

## **8. MINIMUM DISTRIBUTION AMOUNT**

Licensing funds allocated to rightsholders will be sent when the total amount exceeds €10.00.

Amounts allocated to rightsholders that are below the minimum amount will be accrued until the amount exceeds the minimum for distribution.

## **9. DISTRIBUTION OF LICENSING REVENUE RECEIVED FROM OVERSEAS RROS**

### **9.1 Distribution to Irish Rightsholders**

Licensing revenue received from overseas RROs is to be distributed to publishers and authors based in the Republic of Ireland within six months of receipt by ICLA where appropriate attribution records are supplied by the RRO remitting the funds.

## **9.2 Unattributable Overseas Revenue**

Where no such records are provided, funds remitted will be placed into:  
the Unattributable Overseas Income account for redistribution;  
the Cultural Fund; or  
as otherwise determined by the Board.

## **9.3 Distribution of Funds Remitted in Error**

Funds remitted to ICLA by other RROs in error for works not owned by ICLA rightsholders are to be attributed to the correct rightsholder and included in the distribution of Ireland's licensing revenue to overseas RROs. The usual administrative charge will be incurred and deducted from the amount redistributed.

## **10. EX GRATIA PAYMENTS**

ICLA's Board of Directors can elect to make payments to rightsholders whose works can reasonably be assumed to be copied by licensees within a given sector, but which have not been identified in sampling surveys due to inadequate data.

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

## **11. 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 ICLA for determination. If the matter remains unresolved, it shall firstly be referred to the Board of Directors of ICLA 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, nominated by the Law Society of Ireland's Business Arbitration Scheme whose decision will be final and binding upon the rightsholder and ICLA.

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 Ireland or its nominee and the decision of the arbitrator shall be binding on the parties.