

VISCOPY Distribution Policy

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Legal Authority and Interpretation

- 1.1 The legal authority for VISCOPY Ltd's (VISCOPY's) Distribution Policy is contained in its *Constitution*, the *Attorney-General's Guidelines for Collecting Societies* and the powers of Directors are subject to the *Corporations Law*. In these rules, a reference to a Clause is a reference to Clauses of VISCOPY's Constitution.
- 1.2 The legal power and responsibility for determining the method of entitlement by which VISCOPY's revenue – consisting of licence fees collected in Australia and New Zealand, distributions received from affiliated societies and interest earned on investments – is allocated and distributed rests with VISCOPY's Board of Directors (Clause 67).
- 1.3 Subject to paragraph 1.4, royalty allocations and distributions made by the Board are final and binding except that the Board may consider and admit claims made by interested persons after the date of the allocation or distribution concerned. If the Company is satisfied that a person is entitled to a payment, they may make any payment as they consider fit from the Trust Account (Clauses 91 (f) and (g)).
- 1.4 VISCOPY may recover from any member any amounts paid in error by recovering that amount from the member or deducting the amount from any amount distributable to the member (Clause 91 (h)).
- 1.5 The Distribution Rules are determined by VISCOPY's Board of Directors from time to time pursuant to the authority conferred by Clauses 67 and 91. Such determinations are made with the intent and purpose of achieving a fair and equitable distribution of the income collected by VISCOPY.
- 1.6 Rules are applied and interpreted by VISCOPY's Board in a manner that best achieves this intent and purpose. If, in the Board's opinion, this intent and purpose is being abused or has been abused, appropriate action may be taken in order to prevent or remedy this abuse or potential abuse.

- 1.7 Any member is at any time at liberty to notify VISCOPY of his or her objection to any Distribution Rule. VISCOPY's Board will, as soon practicable after that notice, review the objection provided that it is not vexatious or trivial.

2 Exclusions

- 2.1 VISCOPY is not bound to collect or distribute monies received in relation to licences of works that are the subject of a waiver by the copyright holder under the Members Licence Agreement, Schedule 2.

3 CISAC and Contractual Obligations

- 3.1 In formulating the Distribution Rules the Board is bound by Clause 91 to observe and comply with the terms of agreements between VISCOPY and:
 - (a) its members; and
 - (b) its affiliated societies.
- 3.2 Although not binding, the Board endeavours as far as possible to comply with resolutions of the International Confederation of Societies of Authors and Composers (CISAC) related to principles governing the fair and equitable distribution of royalties.
- 3.3 Royalties collected and distributed to VISCOPY by affiliated societies are subject to the laws and conditions applicable in the country of collection.

4 Royalty Distributions Generally

4.1 Distributable revenue is calculated by subtracting from VISCOPY's gross receipts, including interest earned on deposited funds:

- (a) the expenses of and incidental to the conduct, management and operation of VISCOPY; and
- (b) member's special financial contributions (Clause 9); and
- (c) monies applied by the Board to donations for cultural and benevolent purposes associated with the maintenance and development of the visual arts industry including benevolent funds for artists and artists organisations (Clause 83).

"Gross receipts" being receipts from the licensing of rights granted by the *Copyright Act 1968* of which the member is the owner.

4.2 VISCOPY's administrative expenses will vary from year to year. The key expense items are: wages and salaries, amortised capital expenditure, licensing expenses, monitoring, information technology expenses, legal fees and communication costs.

4.3 VISCOPY distributes on a semi-annual (i.e. six-monthly) basis TO Australian members and New Zealand members. Licence fees collected, during the six months period to 30 June and 31 December in any year, are payable at the end of February and August in each year, together with any adjustments to previous distributions.

4.4 Royalties received are distributed to members where copyright owners are identified in the semi-annual distribution following receipt **except** where:

- (a) the distributable amount is less than \$10.00 in which case the credit will be held in Trust;
- (b) the distributable amount exceeds \$10.00 and the member has an EFT facility with VISCOPY;
- (c) otherwise, the distributable amount exceeds \$500.00.

4.5 Similarly, royalties paid to members in respect of credit adjustments are distributed with the next semi-annual payment

the adjustment, subject to the qualifying criteria outlined in the preceding paragraph.

- 4.6 Non-specified royalties and fees received are distributed to VISCOPY for the general benefit of all members.

5 Complaints Procedure

5.1 VISCOPY follows a formal Complaints Procedure as detailed in the Viscopy Complaints Policy.

6 Dispute Resolution Procedure

6.1 If VISCOPY is notified of a dispute among members, or involving members of an affiliated society, VISCOPY will, on being satisfied that the claim giving rise to the dispute;

- (a) is not trivial or vexatious; and
- (b) is supported by prima facie documentary evidence (which may include a statutory declaration),

place the reproduction credits, if any, allotted to the disputed work or works affected in suspense until the dispute is:

- (c) settled; or
- (d) resolved by mediation.

6.2 VISCOPY offers mediation by way of binding referral to The Arts Law Centre of Australia's Mediation service, in the following circumstances, subject to all parties agreeing to submit to the procedure;

- i) Where members are in dispute as to the proportions in which royalty allocations are to be shared;
- ii) Where artist and publisher or producer members are in dispute as to their respective entitlements from VISCOPY;
- iii) Where publisher or producer members are in dispute as to their respective entitlements from VISCOPY.

6.3 As an alternative to mediation, or a further step, VISCOPY can refer a matter of dispute to an arbitrator nominated by the Chair, such arbitrator to be a solicitor of not less than ten years post-

admission experience, or a person holding legal qualifications of not less than ten years post-qualification experience in the field of copyright, pursuant to the terms of the *Commercial Arbitration Act 1984 (NSW)* or equivalent legislation applicable to the state of residence of the arbitrator so nominated.

7 Credits in Trust

- 7.1 VISCOPY uses its best efforts to identify all works appearing in its distribution analysis. Distribution credits otherwise payable may be held in Trust on account of reproductions or communications for which no distribution can be made owing to lack of reliable information or pending notification. When the information becomes available, monies held in suspense are released for payment to the copyright owners in the work.

- 7.2 General distribution credits not payable owing to lack of documentation are paid in the first distribution following identification of the copyright owners. Payment is at the dollar amount that is attributable to the reproduction credit in effect at the time the payment was received.

8 Collecting Royalties - Distribution

- 8.1 **Distributable revenue** means gross licence fees collected from transactional and statutory licences (Part VA, VB and VC) in Australia (Copyright Act 1968) and New Zealand (Copyright Act 1994), as well as licence fees collected by our visual arts sister societies on behalf of our members in over 40 countries worldwide, less VISCOPY's administrative expenses and deductions provided for under the Constitution.
- 8.2 The money that VISCOPY collects from other societies is distributed according to the relevant society's distribution policy and the terms of the relevant agreement negotiated between Viscopy and that international affiliate society, from time to time.

9 ABN/GST

If a member has an Australian Business Number (ABN).

- 9.1 The member must supply VISCOPY with their ABN and confirmation of either their GST Registration or their non-Registration status.
- 9.2 For GST registered members VISCOPY will, in addition to the royalty/licence fee payable, pay an additional 10% GST upon presentation of a valid tax invoice or pursuant to a Recipient-Created Tax Invoice (RCTI) as that term is defined in the GST legislation.
- 9.3 Members not having an ABN may be required to supply a 'Statement by Supplier'. VISCOPY will be required to withhold 48.5% tax from Australian resident taxpayers not supplying an ABN or 'Statement by Supplier' or otherwise being not required to have an ABN.

Based on APRA's *Distribution Rules* with their permission; and in conformance with VISCOPY's *CONSTITUTION*. Including advice on interest from Brian Tucker, CPA and legal opinions from Dr Mark Williams. Approved by the Viscopy Board.