

Terms of Reference Annex: Copyright Licensing

1. Interpretation

1.1 The definitions, below, apply to both this Annex and the Terms of Reference in relation to complaints brought to Ombudsman Services: Copyright Licensing against Participating Companies:

“Award” means the compensation awarded to the Complainant not exceeding £5,000 (inclusive of VAT (if any)) per complaint;

“Collective Management Organisation (or ‘CMO’)”, means a body that either owns rights or administers them on behalf of third parties, and licenses the use of copyright materials (the list of CMOs and their purposes is shown in Table 1). Once a CMO has joined the scheme, it becomes a ‘Participating Company’ (see below);

“Complainant” means a licensee or member of a Participating Company who is eligible to complain to Ombudsman Services: Copyright Licensing about a service supplied by that organisation, as defined in Tables 2, 3 and 4 and who has fulfilled the requirements of the relevant organisation’s internal complaints process or has had sustained difficulty in registering a complaint;

“Customer” means any person who is party to a contract with a Participating Company of Ombudsman Services: Copyright Licensing for the supply or provision of any service falling within the jurisdiction of the Ombudsman and Ombudsman Services: Copyright Licensing. For the avoidance of doubt, where the context allows, it includes a person who is either a Licensee or a member of a Participating Company or someone who applies to take a Licence;

“Licence” means an agreement by a Participating Company to grant broadcast, performance, publication, copying, digital use or other use rights of the copyright material to the person applying and paying to do so;

“Licensee” means a customer who has been granted a Licence or applies for a Licence to broadcast, perform, publish or otherwise use copyright material owned or administered by a Participating Company which falls within the jurisdiction of the Ombudsman and the Ombudsman Services: Copyright Licensing, as defined in Tables 2 and 4;

“Member” means a person who has joined, or is otherwise represented by, a Participating Company, whose copyright material is administered on his or her behalf by that Company and whose eligibility to complain to the Ombudsman is defined in Tables 2 and 3;

“Ombudsman Services: Copyright Licensing” means the Ombudsman Service provided to CMOs, their Members and/or Licensees;

“Participating Company” means a CMO that has put itself under the jurisdiction of

Ombudsman Services: Copyright Licensing for the purposes of resolving outstanding complaints and has been admitted into the Ombudsman Service in accordance with the Terms of Reference, this Annex and the Membership Rules for the Participating Companies and, as the context so requires, each and/or any of its subsidiary undertakings from time to time which has put its relevant services under the jurisdiction of the Ombudsman and Ombudsman Service;

“Sector Liaison Panel (or ‘SLP’)” means the Sector Liaison Panel referred to in Paragraph 6 of this annex;

“User” means a person who is, or is thought to be, using copyright material and is contacted by a Participating Company with a view to

- (a) ascertaining their status, in respect of such alleged use, and
- (b), if the use is occurring (or has occurred), negotiating a Licence.

2. Eligibility to become a Participating Company in the Ombudsman Services: Copyright Licensing

2.1 CMOs who own or administer copyright materials on behalf of third parties are eligible to become Participating Companies of the Ombudsman Services: Copyright Licensing.

3. Services

3.1 The services provided by Participating Companies of the Ombudsman Services: Copyright Licensing which are covered by, and fall within the jurisdiction of the Ombudsman and the Ombudsman Services: Copyright Licensing, are the services associated with the;

- (a) licensing for the broadcast, use, performance, publication, copying, digital use or other use of copyright materials owned or administered by a Participating Company; and
- (b) membership of the Participating Company by the originators or owners of the copyright material on whose behalf it administers the material.

4. Complainants

4.1 Further to, and in addition to, the provisions of paragraphs 3 and 6 of the Terms of Reference, the Ombudsman and the Ombudsman Service: Copyright Licensing shall only have jurisdiction in relation to a complaint against a Participating Company if the person making the complaint (see Table 2 for societies’ coverage, Tables 3 (CMO Members) and 4 (CMO Licensees) for the complaint types and Table 5 for potential outcomes, that are within the Ombudsman’s

jurisdiction);

(a) was, at the time the subject matter of the complaint arose, a Customer or User; or

(b) was at the time the subject of the complaint arose an applicant for a Licence; or

(c) was, at the time the subject of the complaint arose, a Member of a Participating Company;

or

(d) is acting on behalf (and with the consent) of any person falling within the scope of subparagraphs (a), (b) and (c).

5. Limits on the Ombudsman's powers

5.1 Further to, and in addition to, the provisions of paragraph 7 of the Terms of Reference, the Ombudsman shall not accept a complaint about a matter;

(a) which concerns or relates to the Licence fees, tariffs, terms and conditions quoted or charged by the Participating Company or any other matter that is within the jurisdiction of the Copyright Tribunal; or

(b) which concerns a dispute by a party outside the jurisdiction of the Ombudsman, as determined by Tables 1, 2, 3 and 4. 6. Sector Liaison Panel 6.1 Ombudsman Services: Copyright Licensing may constitute a Sector Liaison Panel whose constitution and remit will be determined from time to time by the Board.

Table 1 Participating CMO companies

Abbreviation	Company name and purpose
ALCs	Authors' Licensing & Collecting Society Ltd. - protects and promotes the rights and interests of writers.
BECs	British Equity Collecting Society Ltd. – was established in 1998 by Equity to enforce its members' rights in the UK and collect revenue from the compulsory collective administration of rights in other EU member states. BECS sought individual mandates from performers and now has over 27,500 individual members who have appointed BECS to act as their sole and exclusive agent to collect, distribute and administer "Performers Remuneration". This covers the Rental Right, any blank tape or other levies on copying media or devices, the cable retransmission of programmes incorporating their performance or any other right of a similar collective character which the Board of Management resolves should fall to be collected by BECS. BECS also works as an agent for Broadcasters and Equity to manage and distribute micro payments and royalties negotiated by the Union.
CLA	The Copyright Licensing Agency Ltd. - licenses the copying and digital use of extracts from books, journals, magazines and other electronic and printed publications to enable the efficient sharing of information across organisations without risking copyright infringement.
DACs	Design & Artists' Copyright Society Ltd. – is a visual arts rights management organisation, established in 1983, that provides three services for artists: 'Payback', 'Artist's Resale Right' and 'Copyright Licensing'.

<p style="text-align: center;">Directors UK</p>	<p>Directors UK Ltd. - is the professional association representing British film and television directors. It performs dual roles as a collecting society administering payments for film and TV directors for the secondary use of their works and as a representative body campaigning and providing support services to members. It currently has over 5,000 members.</p>
<p style="text-align: center;">ERA</p>	<p>Educational Recording Agency Ltd. - issues licences for educational establishments to record and access recordings derived from radio and television broadcast output including the repertoire of ERA's members and for these to be used for non-commercial educational purposes (an ERA Licence is required to use the recordings as teaching resources).</p>
<p style="text-align: center;">NLA</p>	<p>Newspaper Licensing Agency Ltd. - provides organisations with permission and access to newspaper content when and how needed, including permission to copy and access over 1,500 titles either directly using 'Clipsearch' or via a media monitoring agency.</p>
<p style="text-align: center;">PRS</p>	<p>Performing Right Society (for Music) Ltd. – ensures that those who wish to play or perform our music outside the home environment can do so by getting the permission they need to play the music they want and ensure that the creators of music are rightfully paid for the use of their work.</p>
<p style="text-align: center;">PPL (PPL & V(ideo)PL)</p>	<p>Phonographic Performance Ltd. - ensures that those who invest their time, talent and money to make recorded music are fairly paid for their work, through licensing recorded music played in public or broadcast</p>
<p style="text-align: center;">PLS</p>	<p>Publishers Licensing Society Ltd. - oversees collective licensing on behalf of publishers for book, journal and magazine copying, including the transition to the digital age.</p>

Table 2 The Ombudsman’s jurisdictional coverage amongst CMOs

Society	Members	Licensees
ALCs	Yes	No
BECs	Yes	No
CLA	No	Yes
DACs	Yes	No
Directors UK	Yes	No
ERA	Yes	Yes
NLA	No	Yes
PRS	Yes	Yes
PPL	Yes	Yes
PLS	(Mandating publishers) Yes	No

Table 3 Exclusions and inclusions for CMO members

Society name	Excluded	Included
ALCs	Royalty distribution policies, membership fees, copyright law, court actions, membership terms and conditions	Customer service, royalty distribution errors, noncompliance with policies or Code procedures, unreasonable delays or misinformation
BECs	as for ALCS	Customer service, noncompliance with policies or Code procedures, unreasonable delays or misinformation
CLA	N/A	N/A
DACs	as for ALCS	as for ALCS
Directors UK	as for ALCS	as for ALCS
ERA	as for ALCS	Non-compliance with policies or Code of Conduct procedures
NLA	N/A	N/A
PRS	as for ALCS	as for ALCS
PPL	as for ALCS	as for ALCS
PLS	as for ALCS	as for ALCS

Table 4 Exclusions and inclusions for CMO licensees

Society name	Excluded	Included
ALCs	N/A	N/A
BECs	N/A	N/A
CLA	Licensing policies, licence fees, copyright law, court actions, licence terms and conditions	Customer service, noncompliance with policies or Code procedures, unreasonable delays, failures or errors, misinformation
DACs	N/A	N/A
Directors UK	N/A	N/A
ERA	as for CLA	Customer service, noncompliance with policies or Code of Conduct procedures
NLA	as for CLA	as for CLA
PRS	as for CLA	as for CLA
PPL	as for CLA	as for CLA
PLS	N/A	N/A

Table 5 Potential Ombudsman outcomes

Society name	Members	Licensees
ALCs	Recommendation to Board of Directors, implementation not automatic	N/A
BECs	Recommendation to Board of Directors, implementation not automatic	N/A
CLA	N/A	Final Decision to be implemented automatically when accepted by complainant
DACs	Recommendation to Board of Directors, implementation not automatic	N/A
Directors UK	Recommendation to Board of Directors, implementation not automatic	N/A
ERA	Recommendation to Board of Directors, implementation not automatic	Final Decision to be implemented automatically when accepted by complainant
NLA	N/A	Final Decision to be implemented automatically when accepted by complainant
PRS	Recommendation to Board of Directors, implementation not automatic	Final Decision to be implemented automatically when accepted by complainant
PPL	Recommendation to Board of Directors, implementation not automatic	Final Decision to be implemented automatically when accepted by complainant
PLS	Recommendation to Board of Directors, implementation not automatic	Final Decision to be implemented automatically when accepted by complainant