

Standard Distribution Rules

GHANA MUSIC RIGHTS ORGANIZATION

The aim of these rules is to ensure that GHAMRO offers high quality services to its members as well as other sister societies GHAMRO has signed representation agreement with. Harmonising the principles applied to the distribution rules will allow GHAMRO to share resources and increase efficiency and transparency.

This document sets out the standards to be met by GHAMRO in the implementation of its distribution policies. These principles will be updated occasionally as technology and good practices develop over time.

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1. General Principles

Division of Revenues

GHAMRO shall apply the following principles when allocating revenues to right holders with 60% and 40% going to authors and neighbouring rights respectively:

- 1) revenues shall be distributed to all right holders at title level; and
- 2) revenues shall be distributed based on actual use in respect of the services to which the revenue relates,

2. Broadcasting

Revenues collected from both Radio and television shall be distributed based on actual use, as reported by the broadcasters or other reliable sources such as any monitoring platform. Revenues shall be allocated for each station or channel and per title separately, taking into account:

Radio

- 1) the distributable amount for the station or channel;
- 2) the cumulative reported duration of all titles broadcast on that station or channel; and
- 3) the cumulative reported duration of usage of each individual title
- 4) the duration of titles and partial use of titles in seconds

Allocation of revenue shall be based on duration of titles and partial use of titles in seconds.

Where it is not economically practicable to allocate all revenue separately per channel, revenues from channels with similar profiles may be pooled and distributed based on reports from a statistically representative sample of channels.

An amalgamation of revenue and usage sources into pools for allocation purposes may only occur where the stations or channels in the pool have verifiably similar licence value and/or similar usage and shall take account of relative usage and audience.

For radio stations that do not supply playlists, a statistically representative sample of stations, for which playlists of good quality are available, may be used to determine the allocation of revenues collected from all similar stations.

The principles and criteria for the selection of reports from radio stations for a statistically representative sample must be transparent and made available to right holders. The selection of the reports must be based on objective criteria and analysis and reflect actual use of titles as closely as possible. The appropriateness of the sample stations for the other stations they represent shall be regularly reviewed and re-assessed. Only high quality reports reflecting actual use may be selected for the sample.

Television

Revenues from a television channel shall be allocated to individual titles in proportion of the cumulative duration of the broadcasting of each title to the total duration of broadcasting of all titles on that channel.

An amalgamation of revenue and usage sources into pools for allocation purposes may only be made where the stations or channels amalgamated have verifiably similar license value and/or similar usage and shall take account of relative usage and audience.

For small and medium television stations or channels that do not supply playlists or for which the cost of processing the playlist is not reasonable considering the revenue collected from that station, a statistically representative sample of stations, for which playlists of good quality are available, may be used to determine the allocation for a wider group of similar stations.

The principles and criteria for the selection of reports from television stations for a statistically representative sample must be transparent and made available to right holders. The selection of the reports must be based on objective criteria and analysis and reflect actual use of titles as closely as possible. If required, different weighting based on objectively justifiable criteria may be applied.

The appropriateness of the sample television stations for the other television stations they represent shall be regularly reviewed and reassessed when necessary. Only high-quality reports reflecting actual use may be selected for the sample. Revenue shall be allocated according to the total duration of the titles broadcasted by all the television stations in the sample.

Works/sound recordings which do not qualify for remuneration, for instance works/sound recordings that do not meet the criterion of “published for commercial purposes” if such a criterion is applied, or titles for which the right holder has already been remunerated directly by the user, must be excluded from the usage reports used for distribution.

Example library or production music does not qualify for remuneration except the underlying musical works/sound recording has not been paid for the use.

4. Public Performance

GHAMRO shall allocate the collected revenues as closely as possible to the actual use and taking into account the following or a mix of potential sources for obtaining data on the actual use and the relevant alternatives (in the order of preference), considering the value of the use of musical works/sound recordings in the different sectors:

- 1) reports from users (using statistically representative samples where relevant);
- 2) reports from monitoring companies;
- 3) reports from background music providers (on what has been copied and ideally played out data); and
- 4) radio reports

If GHAMRO licenses the public performance of musical works/sound recordings in television broadcasts, the share of collected revenues distributed on the basis of television usage reports must be proportionate to and reflect the actual use of television as a source of background music.

5. Live Performance

For concerts of highlife copyright music, programmes are collected for each concert and the revenue is distributed on the basis of those programmes. For other genres, the revenue from a concert for which a specific invoice has been raised is distributed on the basis of its set list, regardless of the level of royalty generated for the event. Furthermore, where a set list has been provided to GHAMRO, the revenue from a series of concerts by the same performer, including tours and residencies, is also distributed on the basis of its set list. Members have a half yearly opportunity to provide GHAMRO with details of their set lists and of their tours and residencies in Ghana for the previous six months for distribution purposes. This guarantees that even a single gig within a six month period can qualify for payment.

The remaining revenue from live performance pools is distributed on the basis of an independent 'Live Music Survey' of venues where live music performances frequently take place. This is a year round survey and covers every county in Ghana.

7. Private copying

Remuneration for private copying shall be apportioned as per the Copyright Regulations 2010, (L.I. 1962) and as closely as possible to the actual use, and, to the extent relevant, allocation should take into account the different media types being used to copy, and the best available alternatives.

Market studies shall be made regularly to allocate revenues as closely as possible to the actual use and in order to obtain statistics on the legal sources used for private copying (recordings purchased, radio stations, web radios).

Audio

The revenues shall be apportioned as follows:

- 1) 40% to composers and publishers;
- 2) 30% to producers; and
- 3) 30% to performers

taking into consideration the various data for each source of private copying, in the same proportion as for the allocation of revenues collected from these sources. For the source "recordings purchased", a combination of physical and digital market share may be used as an alternative.

If no reliable usage data is available, private copying levies may be distributed using radio broadcasting usage as an alternative on the condition that the panel of selected sources are proportionate to the findings of the market studies. If an allocation of revenue according to

market shares is applied by GHAMRO, it must ensure that the sales figures in the country correspond to the actual private copying usage as established in the market studies.

Music video

GHAMRO shall apportion revenues as follows:

- 1) 50% to producers;
- 2) 30% to performers; and
- 3) 20% to authors

according to the reports from users for the broadcasting of those audio-visual products for which the private copying levy is collected. This can include online sources where appropriate. If the quality of the reports from television broadcasters is too poor to properly reflect actual use, the use of other alternatives must be considered.

8. Webcasting

Webcasting revenues shall be allocated similarly to the process for radio broadcast, i.e. according to the actual usage using playlists supplied by the webcaster or podcaster. Due to data volumes and the smaller reach or value of some streams there may be a need to manage the allocation of small revenues that can't be economically processed using full usage data for all webcast channels. If possible, data should be carried between reporting periods so that amounts may accumulated to a level where they can be economically processed.

If usage reports are not available, or allocation of revenue based on usage reports may not be economically practicable, then usage reports of broadcasters or reports by a similar webcasters may be used as an alternative. If this is done, it should be on the basis of establishing, at the time of licensing, a suitable similar radio alternative, and the suitability of the alternative should be re-assessed frequently. A robust method of establishing alternative sources shall be established and maintained.

9. Acceptable Practices When No Other Alternative Is Available

For all kind of revenues, if despite good faith efforts, parts of user reports cannot be processed (for example poor quality playlists that nevertheless have a significant proportion of the titles properly identified), the following practices can be used in the following order of preference, on the condition that the chosen approach reflect the actual use as close as possible:

- 1) allocation using the standard practice for the portion of the users' reports that can be processed;
- 2) allocation using reports supplied by other users of the same sector, when the titles used are supposed to be similar to those of the other users;
- 3) allocation using reports supplied by users of a different sector, but linked to the sector concerned.

10. Fair and Equitable Application of Distribution Rules

The distribution rules and their implementation shall be overseen by a distribution committee, consisting of the Membership Committee, the CEO, Director of Licensing and the Head of the Department. These are considered competent to bring expertise and objectivity to the task.

A non-discriminatory application of distribution rules is essential. There shall be fair and equitable treatment regarding distribution for all represented right holders either directly or through a bilateral agreement with another Society.

11. Distribution Schedule and Practices

GHAMRO shall distribute collected revenues twice a year to all right holders in every financial year in which such revenue is collected, normally in July and December. Also, where possible if the revenue is not good, GHAMRO will distribute once a year.

GHAMRO must develop, approve, and publish their distribution schedule well in advance of the distribution taking place. GHAMRO shall publish the following year's distribution schedule before the end of the current financial year.

The distribution schedule includes distribution to local members and distribution under unilateral or bilateral agreements.

GHAMRO shall provide to the right holders they represent and to other CMO's with which they have unilateral or bilateral agreements, royalty statements itemised per source, work used and the amount allocated to each of the work.

12. Funds for Distribution

GHAMRO shall segregate the funds for each revenue stream. The method for preparing each fund for distribution shall be set out within the distribution rules.

The method is clearly established in section 29(3) and 19(1a) of the Copyright Regulation 2010, L.I 1962 as follows:

- 1) deduction in terms of administrative costs - 30%;
- 2) deductions for social/cultural activities - 10%;
- 4) any additional sources of revenue, such as synchronization, income arising from investments of rights revenue etc. and
- 5) any reserves for redistribution (unclaimed royalties).

GHAMRO shall maintain information about the funds in a manner that enables these details to be reported to right holders as a part of the distribution file.

13. Administrative Costs

The percentage deduction of the administrative and social/cultural activities cost is an approved percentage per the Copyright Act, Act 690, 2005 and GHAMRO has over the years maintained and worked with the said percentage without exceeding it.

14. Rights Conflicts

GHAMRO shall implement fair and transparent procedures for resolving claims conflicts or complaints, including robust processes and reasonable deadlines for the processing of double claims by right holders. If the ownership is contested with credible claim and proof of ownership, GHAMRO shall not pay out monies for the titles in question until the claim has been resolved.

15. Unmatched Usage/Unclaimed Revenues

In order to have minimal unclaimed works usage, it is essential for GHAMRO to have good quality and comprehensive repertoire data and a good quality usage reporting. This will mean GHAMRO setting up a proper Documentation system in order to have steady database as well as expertise to know the documentation process.

Within the Distribution system of GHAMRO, unmatched works are often times included to its distribution after proper researching of works information and indicated as undeclared works and/or productions when allocating revenue since it collects for all repertoires. GHAMRO takes all reasonable steps to ensure that the rights holder has notified the society of his/her works before any payment is made. This however encourages and enables members and non-members notify GHAMRO of all required information of their musical works and sound recording productions.

Any reserve for unidentified work/unclaimed royalties may be maintained by GHAMRO to meet future claims from unrepresented right holders within the prescribed periods.

GHAMRO may open a separate account and keep unidentified/unclaimed revenues for a period of three (3) years after which the revenue shall be added to the preceding distribution if there is/are no claim(s) taking into account in particular allocations made previously to right holders in the relevant financial year, and with the objective of allocating revenue to the right holders most likely to have a claim to such revenue.

The revenue shall be held unto when the right holder:

- 1) cannot be located despite all reasonable endeavours, or
- 2) has not provided the details required to enable the payment.

GHAMRO may hold the relevant revenue for a time beyond the prescribed period if the unpaid revenue is associated with disputes and parties to the dispute can show evidence of arbitration/legal proceedings ongoing.

On that note GHAMRO shall hold revenues for unclaimed repertoire separately from the general reserve.

16. Reserves

At the expiry of the prescription period, revenue held in reserve should be distributed to right holders in proportion to allocations made to those right holders in the relevant financial year.

Deductions or reserves for purposes other than third party claims and types of legal claims given their consent.

GHAMRO shall ensure that during the respective prescribed period, revenues held in reserve may be allocated to right holders making valid claims, e.g. where usage was not properly reported or missing from the usage report.

17. Approval and Publication

The Distribution Rules shall be presented to the Board and approval given at a General Assembly and later published to all members.