

DIRECT LICENSING POLICY (PUBLIC PERFORMANCE AND TRANSMISSION RIGHTS) AND GUIDELINES FOR SYNCHRONISATION LICENSING

What is direct licensing?

Direct licensing is where the person seeking a licence goes directly to the person who owns the copyright and negotiates the terms of the licence with the copyright owner. This is instead of going to PPCA.

This direct licensing policy applies to all protected sound recordings owned and/or licensed by the following label:

JBD Productions

www.jbdproductions.com.au

What is a protected sound recording?

If a sound recording or music video is not protected under Australian copyright law then a licence is not required to use that sound recording or music video in Australia.

Sound recordings are protected under Australian law where:

- the recording has been released for less than 7 weeks, regardless of where the recording was made or who made it;
- the recording was made in Australia;
- first publication of the recording occurred in Australia;
- the person who owned the recording (usually the record company) was either an Australian citizen, resident in Australia or incorporated in Australia;
- any of the performers on the recording are Australian citizens or resident in Australia; or
- there are reciprocal arrangements in place under the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961.

1. Our direct licensing guidelines

- 1.1. These are the direct licensing guidelines of JBD Productions (**we/us/our**). This document contains information about licensing our sound recordings and music videos. It sets out the procedure to be followed when you are making an enquiry about direct licensing for public performance or transmission.
- 1.2. An alternative to licensing the sound recording or music video directly from us is to obtain a blanket licence from the Phonographic Performance Company of Australia (**PPCA**). If you obtain the PPCA blanket licence then you will not require a licence from us because the blanket licence gives you permission, within the terms of the licence, to play any recording from the PPCA



catalogue which covers over 5,000 recording labels including our sound recordings and music videos. Go to www.pcca.com.au or call PCCA on (02) 8569 1111 to find out more.

What does the PCCA blanket licence cover?

The blanket public performance licence which PCCA grants covers the very wide range of sound recordings that meet two criteria. First, the licensed sound recordings must be owned or controlled by copyright owners that are licensors to PCCA and second, the communication and / or public performance of the licensed sound recordings must be protected under Australian copyright law.

As to the first requirement, that the recording be owned or controlled by a PCCA licensor, you can check whether a particular copyright owner is a PCCA licensor by looking on the PCCA website at www.pcca.com.au/current_licensors.htm. That web page also provides a click through to the list of labels controlled by PCCA licensors and covered by PCCA's blanket licence. PCCA licensors include all the major record companies and over 400 other copyright owners.

As to the second requirement, that the recording be protected under Australian copyright law, the law in this area is complex and there is no simple test for determining when a sound recording is protected under Australian copyright law. PCCA is aware that some licensees are under the misapprehension that all US artist recordings are unprotected, and can therefore be played without the need for any licence. This is not correct, and in fact many recordings made by US artists are protected, because of the way that specific aspects of the way that specific aspects of the legal requirements are applied.

In general terms, copyright protection applies to the playing of a sound recording in public in Australia if that recording was made by a citizen, national or resident of, or body corporate incorporated in, a "protected" country. The US is not a "protected" country at present, but as we explain here, that does not mean that all recordings by US artists or made in the US are necessarily unprotected under Australian copyright law.

First, determining who "made" the recording (and hence where their base or residence is) can, in itself, be difficult. Traditionally, the "maker" for most recordings was the record company. However, following changes to the Copyright Act, on 1 January 2005, every performer contributing to a recording (including backing and session musicians) is also a "maker" of that recording, and if any of them are resident or nationals of protected countries, then the recording will be protected.

Quite apart from the nationality of the artists or the place of incorporation of the record company, copyright protection for public performance also



applies if the recording was made in a "protected" country. Some US artists, for example, have recorded outside the US, making those recordings protected.

In addition, overseas recordings may attract a period of interim protection following release, and may be protected (wherever they were made) from the date of first commercial release until the earlier of 7 weeks after release, or the date of release in Australia.

Putting these rules together and applying them to a specific sound recording is very difficult. In order to determine whether a particular sound recording is protected or not the following information will be required:

- who "made" the recording, and if it was a record company, their place of incorporation;
- the place where the track was recorded (i.e. the location of the recording studio);
- the release date of the track, the country of first release and if released in Australia, the date of first release here; and
- the names of everyone who performed on the recordings and their citizenship or residency at the date the recording was made.

PPCA does not believe the law should be this complicated and difficult to apply, but of course PPCA has no control over copyright legislation. We can assure you that PPCA licences allow your business to avoid having to undertake any of this complex analysis of whether a recording is or is not a protected sound recording, as long as that recording is controlled by one of the many copyright owners that licence their repertoire to PPCA.

PPCA urges anyone wishing to determine whether or not a particular recording is or is not protected to obtain their own independent legal advice.

2. Types of licences offered for sound recordings and music videos

2.1. We only provide non-exclusive licences. This means we can offer the same licences to other people. For example, if we licence your restaurant to play our sound recordings and/or music videos, we can also licence any other businesses (including other restaurants) that wish to play our sound recordings and/or music videos.

2.2. We offer licences for the following purposes:

- a **transmission** licences for our sound recordings and/or music videos. You will need a transmission licence if you intend to



communicate the sound recording or music video to the public, for example by way of radio, television or the internet;

- b **public performance** licences for our sound recordings and/or music videos. You will need a public performance licence if you intend to play the sound recording or music video in public, for example by playing a CD at your business premises;
- c **DJ performance** licences if you intend to play our sound recordings and/or music videos in a venue or nightclub for use at your gigs;
- d **broadcasting** licences for our sound recordings and/or music videos. You will need a broadcasting licence if you intend to play the sound recording by means of a broadcasting service or any similar or related service or activity in the nature of "broadcasting" This would include licences in both sound recordings and music videos for radio and/or television broadcast;
- e **webcasting** licences for our sound recordings and/or music videos. You will need a webcasting licence if you intend to communicate the sound recording or music video to the public, for example by way of internet radio or the internet;
- f **datacasting** licences for the right to communicate a sound recording and/or music video to the public by means of a datacasting service;
- g **synchronisation** licences for our sound recordings and/or music videos where they are used as soundtrack material (of any kind) in film, television programs, advertisements, video game or any other visual media.
- h **compilation** licences if you intend to include our sound recordings and/or music videos on a compilation album or DVD to be made available for sale to the public (this includes all retail stores, market stalls, online stores etc)
- i **juke box** licences if you intend to reproduce our sound recordings and/or music videos for use in juke boxes supplied to venues such as pubs, clubs, dance studios, fitness centres, offices and retail outlets or for use as part of a digital jukebox on the Internet;
- j **music on hold** licences if you intend to reproduce or communicate our sound recordings and/or music videos via your telephone system or network to telephone callers to, or



within your business with a "music on hold" facility (where music is played while the caller is 'on hold')

- k **sample or remix** licences if you intend to use an excerpt ("sample") of our sound recordings and/or music videos in your track or video and/or you wish to create a remix of an existing JBD Productions recording;
- l **digital download** licences if you intend to make our sound recordings and/or music videos available from your website by means of permanent or timed-out digital download technology;
- m **mobile product** licences if you wish to make our sound recordings and/or music videos available for streaming or download to any mobile telephone device;
- n These licences are separate from any licence required in respect of the underlying copyright in the music and lyrics on the sound recording or music video. Unless the underlying musical works are no longer protected by copyright, you will also need to obtain permission to use the underlying musical works (including any lyrics). Permission to use musical works can be sought from the Australasian Performing Rights Association (**APRA**) and the Australasian Mechanical Copyright Owners Society (**AMCOS**). These two organisations operate from the same office and have responsibility for different types of licensing. See www.apra.com.au or call 1300 852 388.

3. Our synchronisation licensing guidelines

- 3.1. These are the synchronisation licensing guidelines for JBD Productions. This document contains information about licensing our sound recordings for synchronisation in film, television and advertising. It sets out the procedure to be followed when you are making an enquiry about licensing for synchronisation purposes.
- 3.2. As the PPCA does not cover synchronisation of any kind, enquiries for synchronisation licences can be submitted to JBD Productions only.



4. What is the process for synchronisation licensing?

- 4.1. Our synchronisation licence fees are set out in the schedule to these guidelines.
- 4.2. To enquire about directly licensing any of our sound recordings or music videos, please contact:

JBD Productions

Jan Davis (Manager)

Heidelberg Heights VIC 3081

Australia

m: 0405 082 080

e: jan@jbdproductions.com.au

w: www.jbdproductions.com.au

- 4.3. We require the following information:
 - a your business name;
 - b your ABN;
 - c your contact details;
 - d a brief description of your film, television or advertisement;
 - e an accurate estimation, to the best of your ability and in good faith, of the intended scale of the project and likely date of the end-product's release;
 - f the title of each sound recording and/or music video you wish to use (if you wish to use the entire album please indicate this);
 - g a brief description of how you will be using the sound recording and/or music video (please keep the description under 200 words);
 - h how long you require the licence (for example, is it for a one-off event or do you require it for a longer period or reoccurrence such as 12 months?); and
 - i intended audience for the project.
- 4.4. Once you have provided us with this information we will get in touch with you to discuss whether a direct licence is likely to be appropriate in the circumstances. We will endeavour to respond to your valued enquiry within 7 working days. Please indicate if you require the licence urgently at the time of your enquiry.



- 4.5. After speaking with you, we may require additional information. Once you have provided us with any additional information we require we will provide you with a quote for the licence fee. Our licence fee includes the cost of preparing the licence agreement. Licence fees vary depending on the type of use you are making of the sound recording or music video. Please note that we do not provide any licences free of charge; however we can negotiate a discounted rate or a free trial period depending on the circumstances of your licensing requirements.
- 4.6. If you accept our licence fee you must notify us in writing of your acceptance. We will then prepare the licence, which sets out the terms and conditions under which we grant you the licence. A copy of our standard licence terms is available upon request.
- 4.7. We grant licences for the following periods:
 - a one-off episodes and reoccurring, advertisements, media presentations, films or videos for up to one month;
 - b 6 months;
 - c 12 months;
 - d longer periods of time are subject to negotiations with JBD Productions
- 4.8. We grant licences to the following types of productions and for the following purposes. If your production type or purpose is not listed you may fit into our 'other' category:
 - a short films;
 - b feature films;
 - c advertisements;
 - d visual media;
 - e television programs;
 - f movie producers;
 - g television producers;
 - h radio producers;
 - i other.



- 4.9. Once you have paid the licence fee and have signed the licence agreement you are able to use the sound recording and/or music video in accordance with the terms and conditions of the licence. Don't forget to contact APRA and AMCOS to see if you also require a licence from them for the use of the musical works and lyrics. See www.apra.com.au or call APRA and AMCOS on 1300 852 388 to find out more.

5. What is the process for direct licensing?

- 5.1. Our licence fees are set out in the schedule to these guidelines.
- 5.2. To enquire about directly licensing any of our sound recordings or music videos, please contact:

JBD Productions

Jan Davis (Manager)
Heidelberg Heights VIC 3081
Australia
m: 0405 082 080
e: jan@jbdproductions.com.au
w: www.jbdproductions.com.au

- 5.3. We require the following information:
 - a your business name;
 - b your ABN;
 - c your contact details;
 - d a brief description of your business (eg café, gym, radio station, film festival);
 - e an accurate estimation, to the best of your ability and in good faith, of the number of customers per month attending your business (for radio and television stations, we require an estimate of your audience numbers. For one-off events please estimate the number of people you anticipate will attend);
 - f the title of each sound recording and/or music video you wish to use (if you wish to use the entire album please indicate this);
 - g a brief description of how you will be using the sound recording and/or music video (please keep the description under 200 words);



- d live music venues;
- e festivals;
- f gymnasiums and fitness centres;
- g music on hold;
- h nightclubs;
- i restaurants and cafes;
- j schools and universities;
- k computer game manufacturers;
- l recording studios;
- m music producers;
- n performing artists;
- o music promoters or agents;
- p internet;
- q other.

5.9. Once you have paid the licence fee and have signed the licence agreement you are able to use the sound recording and/or music video in accordance with the terms and conditions of the licence. Don't forget to contact APRA and AMCOS to see if you also require a licence from them for the use of the musical works and lyrics. See www.apra.com.au or call APRA and AMCOS on 1300 852 388 to find out more.

5.10. Feedback

- a JBD Productions welcomes any feedback or comments for improving its direct licensing policy. To do so please email: jan@jbdproductions.com.au



SCHEDULE 1: LICENCE FEES

Each licence and the fees/royalties payable are negotiated on a case by case basis. The following will be considered in determining the fees/royalties payable:

- The prevalence of the sound recordings (e.g. how important is the music to the service,);
- the size of the audience and, for music videos, the number of screens in use; and
- the rights that the customer requires.

The fee/royalty applicable may also vary depending on the rights the customer requires and the service that is being offered (e.g. in some cases pay per play, in other cases a percentage of the revenue generated by an advertisement).

Fees may also vary having regard to any marketing the customer agrees to undertake in respect of the JBD Productions recordings and music videos, any customer data available, and any other indirect benefits. Please note that the aforesaid provisions shall not automatically result in a reduced rate.

Please contact us for more information regarding licensing fees and we will endeavour to respond within 7 working days.

JBD Productions

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