COPYRIGHT LICENSING LIMITED
trading as Tāwhia Copyright Aotearoa (TCA)
DISTRIBUTION POLICY
As Approved at the Company's AGM held 26 May 2023

1. INTRODUCTION

Tāwhia Copyright Aotearoa (TCA) receives revenue from domestic licensing schemes on behalf of publishers and authors worldwide. It also receives licensing revenue from overseas Reproduction Rights Organisations (RROs) and Collective Management Organisations (CMOs) on behalf of publishers and authors in New Zealand for copying and other uses [1] of their works overseas. In 2019, TCA commenced licensing services for New Zealand visual artists. This policy also applies to licensing schemes and licence services for visual artists.

The term *Distribution* is used by RROs and CMOs to distinguish payments of net licensing fees that are made to Rightsholders, from other payments the RRO/CMO may make in the course of its operation. This Distribution Policy sets out the process by which TCA will deliver on the Objects and Powers in section 2.1 of the company's constitution for the allocation of monies. The policy is set by TCA's Board of Directors, and approved by the Company's shareholders at the Annual General Meeting, to ensure that distribution of licensing revenue is:

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

In 2019 TCA commenced the process of transitioning New Zealand Rightsholders from Mandate Agreements to a new *Rights Agreement*.[2] The transition took place in conjunction with the rollout of *My*Copyright.

[1] Two examples are Public Lending Right payments and Equipment Levy funds
[2] Referred to on our website as the Rights Agreement

2. LICENSING REVENUE

TCA represents Rightsholders whose works are copied under TCA licensing schemes and copyright clearance services operating in New Zealand. It has agreements with New Zealand Rightsholders and reciprocal agreements with RROs and CMOs overseas that provide the repertoire that can be copied under its licensing and clearance services.

TCA receives licensing revenue from RROs and CMOs overseas on behalf of New Zealand Rightsholders for copying of their works overseas under similar licensing schemes and clearance services.

Revenue from TCA's domestic licensing schemes is held in different revenue pools (e.g. Universities, Schools, Business etc.) and electronic and physical data collections are carried out in each sector to gather bibliographic data on the works being copied under licence for distribution purposes. When new licensing schemes are commenced, the establishment of appropriate data collection and distribution practices for each scheme will be approved by the TCA Board. This will include reference to:

1. the potential number of licensees in the scheme
2. the potential revenue from the scheme
3. the ability of licensees to provide data on the copies they are making of copyright materials
4. a determination of how the revenue from the scheme will be treated – both initially and in future

Reference will be made to the operation of similar or equivalent schemes with the goal of ensuring consistency and fairness in TCA's data collection and distribution practice.

Revenue from TCA's Copyright Clearance Services is held separately and licensees provide TCA with records of all copying carried out under licence for invoicing purposes.

3. DISTRIBUTABLE FUNDS

3.1 Distributable Funds

At the end of each accounting period (calendar year), net revenue from TCA's domestic licensing schemes is transferred to appropriate distribution pools and set aside for distribution. Net revenue from overseas RROs and CMOs is transferred to an Overseas Holding Account and distributed at regular intervals. All funds set aside for future distribution 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 TCA's operating costs.

3.3 Deductions from Blanket Licensing Schemes

Each blanket licensing revenue pool is offset by a proportionate share of TCA's net operating costs, a contribution to the Cultural Fund and a contribution to the Legal Reserve Fund (formerly known as the Indemnity Fund). The balance is set aside for distribution (Distributable Funds).

3.4 Administrative charges

TCA deducts a 20% charge for costs incurred in the distribution of revenue from copyright clearance services, visual arts licensing, and from overseas RROs and CMOs.

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

3.5 Cultural Fund

Each year 2% of revenue from blanket licensing schemes is allocated to a separate account for cultural and/or social purposes conducive to the interests of Rightsholders TCA represents and in line with TCA's Constitution.

3.6 Legal Reserve Fund

Each year 1% of revenue from blanket licensing schemes is allocated to a separate account to fund legal actions (e.g. High Court cases, Copyright Tribunal cases and indemnity claims). This allocation is over and above general legal expenses that are budgeted for and incurred in the normal course of TCA's business.

3.7 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.

3.8 Trust period

Distributable Funds for each accounting period are held upon trust for a period of at least five years from the end of the accounting period in which the monies were received, or such further period as the Board may determine.

During the five-year trust period, TCA will take proactive steps to locate Rightsholders who have not previously received funds, or whose contact details are out of date. The process TCA follows is outlined in the Distribution Manual.

4. ALLOCATION OF DISTRIBUTABLE FUNDS

4.1 Calculation of the amount allocated

TCA's distributions are based on the copying records provided by licensees. Data from other sources may also be used in circumstances where adequate copying records are not available from licensees. The TCA Board will approve the use of other data sources prior to any distribution being made on this basis. Copying records are obtained from some licensees via data collections and from other licensees via usage reports that are provided in digital formats. For Blanket Licensing Schemes funds are allocated to copying records on a per page basis by dividing the distribution pool by the total number of copy pages in the copying records collected from each licence sector to calculate the page rate and then multiplying the copy pages for each record by the page rate:

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

The allocation of revenue from copyright clearance services and visual arts licensing is based on copying records provided by licensees. Funds received from overseas are allocated based on the data provided by the remitting RRO or CMO.

4.2 Attribution

All money allocated for the copying of a particular work is attributed to the Rightsholder who is required to share the funds with other parties based on the contractual arrangements between them. As part of the process of accepting a payment of licensing fees via *My*Copyright, Rightsholders warrant that they control reproduction rights in the work. Local representatives of overseas Rightsholders are nominated as recipients before overseas RROs or CMOs. Access to attribution data is provided via *My*Copyright and Rightsholders complete a TCA Rights Agreement before they first use the *My*Copyright system.

In circumstances where the rights in a work have transferred, TCA will require a written undertaking[3] from all parties to the work prior to recording the new party as the Rightsholder/s of the work. In circumstances where rights in a work have reverted to the author/s, notification to TCA of the change in Rightsholder/s can be made via *My*Copyright if the former Rightsholder has access to the portal, or in writing[4].

Monies allocated to overseas Rightsholders are attributed to the RRO in their country of residence where one exists. These funds are distributed to the RROs that have signed Reciprocal Agreements with TCA 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 or until such time as a B Agreement may be transferred to an A Agreement (whichever is earlier).

5. UNIDENTIFIED COPYING

TCA will use best endeavours to identify copied works so that the Rightsholder can be remunerated for copying under licence. In undertaking the research required to fully complete a copying record provided by a licensee, TCA balances the time needed to be spent with the likely return to the Rightsholder from the licence fees that may be allocated if the work can be identified.

[3] Rights Transfer Notification (Distribution Manual)
[4] Rights Reversion Notification (Distribution Manual)

6. WORKS EXCLUDED FROM DISTRIBUTION

The following works are excluded from TCA's distributions:

- Works that can be identified as public domain (out of copyright);
- Works of Rightsholders who have elected to exclude their works from TCA's licence schemes;
- Works that fall outside the coverage of TCA Licensing Schemes. The work-types are listed at tawhia.nz/permissions-exclusions/
- Works of Rightsholders who have advised TCA that their works can be copied freely without payment of a licence fee. These are referred to as copyright-free. In this instance TCA asks the Rightsholder to confirm, via MyCopyright, 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.

The New Zealand Government has a copyright policy for its agencies known as NZGOAL – NZ Government Open Access Licensing. All works produced by or on behalf of a State Services Agency[5] will be excluded from TCA's distributions unless a State Services Agency has provided TCA with the rights to include such works.

7. DISTRIBUTION OF DISTRIBUTABLE FUNDS

Distributable Funds available for distribution from the previous accounting year are allocated for distribution in the last quarter of each year. Revenue from a number of different licensing schemes including revenue received from the Copyright Clearance Service may be included in notifications provided to Rightsholders.

Distribution of licensing fees received from some sectors may be carried forward and accrued until there are sufficient funds to distribute and/or sufficient data on which to base the distribution.

[5] https://ssc.govt.nz/our-work/state-sector-organisations/

7.1 Timing of Distribution

Monies allocated to Rightsholders from Distributable Funds must be notified to Rightsholders as soon as practicable after distributable funds have been allocated. For Domestic Licensing Schemes this is generally within 7 months after the end of the calendar year in which the licence fees were generated.

7.2 Distributions to RROs

Funds allocated to overseas RROs which have an A agreement with TCA will be paid within three months of the annual distributable funds being allocated where the amount is more than $200.00.

Funds received from overseas RROs sometimes identify the Rightsholder as being a New Zealand organisation or individual in error. When this occurs, the funds are reallocated to the correct RRO and remitted with the next payment of annual distributable funds.

Funds allocated to overseas RROs which have a B agreement with TCA will be held for 5 years before being transferred to appropriate distribution pools for redistribution (these funds are held in case an A Agreement is entered into and funds are able to be transferred).

In circumstances where works copied under TCA licences are determined to belong to Rightsholders in countries where TCA does not have an agreement with the local RRO or in countries where no RRO exists, the copies are recorded but excluded from the distribution.

7.3 Distribution to New Zealand Rightsholders

New Zealand Rightsholders are notified of the amounts they may be entitled to claim from Distributable Funds. Information provided via MyCopyright sets out details of the:

- ISBN / ISSN
- Title of the works copied (including article and chapter names, page numbers, volume and edition if provided);
- Year of Publication
- Imprint (publisher);
- Name of the author(s) and/or editors;
- Number of copied pages;
- Page rate;
- Amount payable for each record;
- Distribution pool from which money allocated (or RRO, or Copyright Clearance Service).

Payment to New Zealand Rightsholders is made when an Authorised User of the Rightsholder finalises the claim process in *My*Copyright. Payment to a New Zealand Rightsholder can only be made to a New Zealand bank account.

Information notified to visual arts rightsholders is informed by the data provided by the licensee.

8. MINIMUM DISTRIBUTION AMOUNT

Rightsholders will be notified when distributable funds allocated to them have accrued during the trust period to:

- $50.00 and over for New Zealand Rightsholders that are registered for MyCopyright;
- $200.00 and over for New Zealand Rightsholders that are not registered for MyCopyright
- $200.00 and over for RROs.

At the end of the trust period any amounts below the payment threshold will be transferred into the appropriate distribution pool at TCA's discretion taking into account the provisions of paragraph 13.

9. CLAIMING FUNDS ALLOCATED

New Zealand Rightsholders claim the Distribution Funds allocated to them via the online process in *My*Copyright. Access to *My*Copyright is provided to New Zealand Rightsholders who have signed the Rights Agreement. This Agreement outlines:

- The Grant of Rights from the Rightsholder to TCA
- The Rightsholder's responsibilities, warranties and indemnities
- TCA's responsibilities and obligations, including under the terms of this Policy
- Distribution payments must be made to a New Zealand bank account

In circumstances where TCA considers it unreasonable or impractical for a Rightsholder to use the *My*Copyright to make a claim, the following process will apply:

1. *The Rightsholder will be provided with a Notification detailing amounts TCA considers are owing to the Rightsholder.*
2. *The Rightsholder must provide a GST invoice (if GST registered) and sign a Rightsholder Distribution Warranty and Indemnity form which states:*

- *I/we will distribute to each author, illustrator, publisher and/or any other third party Rightsholder the amount due to them in accordance with the terms of their agreement with me/us and undertake to advise them that the royalty has been generated from TCA Licenses.*
- *I/we have the authority as owner of the copyright work or as agent for the Rightsholders to receive the Total Amount Claimed.*
- *The Rightsholder/Controller will indemnify and hold harmless Copyright Licensing Limited against any and all liabilities incurred by Copyright Licensing Limited as a result of any third party bringing a claim or action or proceeding against Copyright Licensing Limited for infringement of the copyright works listed on the corresponding Notification of Copied Works (NOCW) or claiming an interest in the Total Amount Claimed.*

Where the claimant is:

- not registered for GST or is
- an estate or beneficiary of an estate

a letter stating that they own the rights to the work/s is required.

10. DISTRIBUTION OF LICENSING REVENUE RECEIVED FROM OVERSEAS RROS

10.1 Distribution to New Zealand Rightsholders

Licensing revenue received from overseas RROs and CMOs is distributed to New Zealand Rightsholders at regular intervals by TCA where appropriate attribution records are supplied by the RRO or CMO remitting the funds.

10.2 Unattributable Overseas Revenue

Where no such attribution records are provided, funds remitted will be placed into:

- the Cultural Fund; or
- as otherwise determined by the Board.

10.3 Distribution of Funds remitted in error

Funds remitted to TCA by other RROs or CMOs in error for works not owned by New Zealand Rightsholders are attributed to the correct Rightsholder and included in the distribution of New Zealand licensing revenue to overseas RROs. The usual administrative charge will be incurred and deducted from the amount redistributed.

11. EX GRATIA PAYMENTS

TCA's Board of Directors can elect to make payments to New Zealand Rightsholders who can establish substantial copying of their works under a TCA licensing scheme that has not been identified by the copying records.

To make an ex-gratia claim, Rightsholders are required to provide a statutory declaration in compliance with the Oaths and Declarations Act 1957, setting out the details of the work copied, including pages copied, number of copies made and where the copies were made. They will also be required to supply evidence that the copies were made under a TCA licensing scheme and not under a fair dealing provision of the Copyright Act 1994 or a direct licence from the Rightsholder.

In determining whether an ex-gratia payment should be made, the Board will take into account payments from previous distributions and any other relevant circumstances

12. DISPUTE RESOLUTION

TCA's Alternative Dispute Resolution Process[6] will apply to any dispute regarding an amount paid or payable to a Rightsholder. This 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 TCA for determination. If the matter remains unresolved, it shall firstly be referred to the Chair of the Board of TCA for assessment that the CEO has made an appropriate determination based on this Policy and the specific circumstances of the dispute. 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, appointed by the Chairperson of LEADR New Zealand Incorporated or the Chairperson's nominee, whose decision will be final and binding upon the Rightsholder and TCA. Should mediation be unsuccessful, then such dispute may be referred by either party to arbitration of a single

6 https://www.tawhia.nz/governance-policies-and-annual-reports/

arbitrator appointed by the Arbitrators Institute of New Zealand or its nominee and the decision of the arbitrator shall be binding on the parties.

13. TRANSFER OF FUNDS FOR REDISTRIBUTION

At the end of the trust period, any undistributed funds will relate to one of the following categories:

- Unidentified copying;
- Allocated to Rightsholders TCA has been unable to locate;
- Allocated to Rightsholders who have not claimed the money; or
- The total amount allocated to the Rightsholder from all distributable funds has not met the distribution threshold.

At the end of the trust period (or longer period as determined by TCA), after every reasonable effort has been made to correctly identify and locate the Rightsholder/s to whom monies have been allocated, undistributed funds may be transferred to appropriate distribution pools for redistribution where TCA considers that there is insufficient information available to the company to enable an equitable and accurate distribution. Such funds will be transferred without any further deduction of operating costs.

Tāwhia Copyright Aotearoa

Glossary

Blanket licensing scheme	Permission in advance to copy from multiple works by multiple users whose copying practices are subject to conditions determined by their employer
Collective Management Organisations (CMOs)	Rights organisations, like TCA, that manage copyright on behalf of multiple Rightsholders
Copyright clearance services	Permission for rights clearance on a work-by-work basis
Cultural Fund	A fund operated by TCA to invest in grants and projects that protect, support and grow the industry
Data collection	A process by which TCA licensees provide information on the works that they have copied under licence
Distribution	A payment of licensing fees to Rightsholders
Legal Reserve Fund	A fund operated by TCA to respond to claims under Indemnity Clauses in TCA Licenses and to fund legal costs for disputes or Copyright Tribunal cases of strategic importance
Licence pool	Funds received from a group of licensees – eg Primary Schools
*My*Copyright	An online portal through which Rightsholders can manage the works for which TCA holds data and through which Distributions can be accepted
Reproduction Rights Organisations (RROs)	Organisations, like TCA, that collectively manage the reproduction rights of Rightsholders and are members of IFRRO (International Federation of Reproduction Rights Organisations)
Rights Agreement	The written agreement between TCA and a Rightsholder that outlines the terms under which TCA licences the Rightsholder's works
Rightsholder	An individual or organisation that owns copyright in a work/s