

**GUIDELINES FOR WARNER LICENSING PUBLIC PERFORMANCE AND  
COMMUNICATION RIGHTS IN WARNER SOUND RECORDINGS AND MUSIC VIDEOS  
("GUIDELINES")  
GUIDELINES LAST UPDATED AND CURRENT AS AT 1 APRIL 2015**

Warner Music Australia Pty Limited ("WMA") has one of the finest collections of master recordings in the world, from Muse to Led Zeppelin, and from New Order to Michael Buble. It has an enviable roster of local talent and copyrights too, including ARIA award winning artist Eskimo Joe, rock sensations Gyroscope and the timeless music of Katie Noonan.

The information contained in these Guidelines is designed to outline the circumstances in which WMA would consider entering into direct licences. In order for WMA to be able to provide the most efficient service, for public performance, broadcast and communication licensing, please see the Guidelines and important information below. Please note that the information contained in these Guidelines may change from time to time.

**1. What type of licences do these Guidelines cover?**

The Guidelines cover the grant of Public Performance Rights and certain (but not all) Communication Rights in sound recordings and videos owned or controlled by WMA to third parties by WMA ("Licence(s)").

Such Licences granted by WMA are non-exclusive, i.e. WMA is entitled to grant the same rights in its sound recordings and music videos to other third parties.

A Public Performance Right means the right to play sound recordings and music videos in public; and

A Communication Right means the right to communicate to the public sound recordings and music videos including the right to broadcast sound recordings and music videos.

These Guidelines do not cover all licences that grant a Communication Right. Please see below for further explanation and more details of the types of licences covered by these Guidelines which require a Communication Right.

**2. Rights and Licences**

WMA will grant Public Performance Rights or Communication Rights in WMA sound recordings and music videos directly to third parties for the following purposes:

- (a) Public Performance - This Licence will grant the user the right to cause a sound recording to be heard or a music video to be heard and viewed in public. The type of Licence covers sound recordings and music videos played in public venues such as cricket grounds, sports arenas, nightclubs or hotels, and sound recordings played as background music in retail stores, restaurants and cafes.

- (b) Broadcasting – This Licence will grant the user the right to communicate a sound recording and/or a music video to the public by means of a broadcasting service (as that term is defined from time to time in the Broadcasting Services Act (**BSA**)) or any similar or related service or activity in the nature of “broadcasting” (as that term is commonly understood). This would include licences in both sound recordings and music videos for radio and/or television broadcast.

Please note that the Copyright Act gives the user the right to publicly perform or broadcast a sound recording or music video, provided equitable remuneration is paid for its use. The Licences set out above are automatic under the Copyright Act if remuneration is already agreed between the parties.

- (c) Datacasting – This Licence will grant the user the right to communicate a sound recording and/or a music video to the public by means of a datacasting service (as that term is defined from time to time in the BSA).
- (d) Simulcasting – This Licence is typically associated with a broadcasting Licence and grants the user the right to communicate a sound recording and/or music video to the public (but only as part of the simultaneous transmission of a broadcast) over the internet, a mobile telecommunications network or any other communications network now known or developed in the future, in circumstances where the content of the broadcast is unaltered.
- (e) Webcasting – This Licence grants the user the right to communicate a sound recording and/or music video to the public by means of a non-interactive, pre-programmed service which has the following characteristics:
- (i) The communication from the servers of the service provider occurs over the internet;
  - (ii) multiple simultaneous users of the service can hear the sound recording on their playback devices at or near the same time that the communication of the sound recording is initiated by or on behalf of the operator of the service;
  - (iii) no user is able to choose which sound recordings they hear or the times at which they hear them, or is otherwise able to control the nature and timing of the content delivered to them (i.e. there is no on-demand element); and
  - (iv) there is no copy of the sound recording, or any other form of fixed file or data from which the user can subsequently replay the sound recording, which is created on the user’s playback device.
- (f) Incidental Copying/Dubbing – This Licence will be in addition to the particular Communication Right or Public Performance right granted in order for the user to make copies of sound recordings and music videos for the purpose of exercising the relevant Communication or Public Performance Right in circumstances where section 107 of the Copyright Act does not apply (see below for details). For example, WMA would grant a right to copy sound

recordings for the purpose of digital jukeboxes where the primary licence is the right to publicly perform sound recordings in bars.

- (g) Ephemeral Copying – Section 107 of the Copyright Act allows a broadcaster to make a reproduction of a sound recording for the purpose of broadcasting the sound recording provided that a copy of the recording is destroyed within 12 months of the copy first being made. This section does not apply if the person who makes the reproduction is not the same person as the broadcaster. Therefore the user may require WMA to grant an ancillary reproduction right if the maker of the reproduction is not the broadcaster or where the user wishes to retain copy of a sound recording after the expiry of the 12 month period.
- (h) Retransmission Remuneration – This Licence is the right to collect on behalf of another person, equitable remuneration to which that person becomes entitled as a result of the retransmission of a free-to-air broadcast which includes a sound recording owned or controlled by that person.

As a reminder, if you wish to exercise any Communication Rights other than as set out in (b) to (h) above and (i) below, please contact our Business Development department.

- (i) Music On Hold - This Licence grants the user the right to communicate a sound recording to telephone callers on hold by any means (whether analogue or digital and whether now known or developed in the future) from a device, system or service used in connection with any telecommunications device, system, service or network. WMA does not usually grant these licences due to the fact that it is generally not commercially viable for it to negotiate, administer and report on these licences. However WMA will grant Music On Hold licences in certain circumstances. Please contact our Business Affairs department for further information.

### 3. Other Licenses

These Guidelines do not seek to cover WMA's licensing policy in respect of all other types of licences not expressly referenced, including but not limited to:

- (a) Synchronisation licensing (other than the Incidental Copying right necessary for communication to the public of WMA Recordings and as further described below) or compilation licensing. For these type of licences please contact our licensing department via email (email: [licensing.australia@warnermusic.com](mailto:licensing.australia@warnermusic.com)), via fax (fax no: (02) 9950 1530) or via phone (ph no: (02) 9950 1500) and also see WMA's Synchronisation Licensing Policy ; and
- (b) Licences that grant Communication Rights in WMA recordings which require on-demand rights for such licence (e.g. digital downloads, on-demand streaming to mobile or on-line and podcasting). For those licences, please contact our Business Development Department via email (email: [wma.businessdevelopment@warnermusic.com](mailto:wma.businessdevelopment@warnermusic.com) ), via fax (fax no: (02) 9950 1510) or via phone (ph no. (02)99501500).

#### **4. Sound Recordings and Music Videos**

Warner grants blanket licences in all its sound recordings and music videos from all its labels, including the following non-exhaustive list of labels:

Warner Bros.  
Warner Bros. UK  
Maverick  
Atlantic  
Atlantic UK  
Rhino US  
Rhino UK  
Elektra  
Fueled By Ramen  
London Records  
East West  
Mushroom Records  
Festival Records  
Milan Records  
Warner Classics  
Sire

You should be aware that some sound recordings in Australia are unprotected which means that a user does not require any licence from WMA to be able to publicly perform or broadcast such sound recordings (“Non-Protected Recordings”). Determining whether a sound recording is a protected recording (and consequently requires a licence) (“Protected Recording”) or an Unprotected Recording is a complex process.

In determining whether a sound recording is protected or unprotected, you need to consider the country where the recording was made, the nationality and residence of everyone performing on the recording (including session musicians), the country where the recording was first released, the date and place of first release and the age of the recording. As a general statement recordings made in Australia, New Zealand, the UK, Europe and Canada are usually Protected Recordings and a Licence will be required. Recordings made in the US may also require a Licence depending on the details of the Recording. Please note all music videos are protected.

WMA recommends you obtain your own legal advice if you intend only to exercise rights in Unprotected Recordings.

#### **5. Who We Licence**

WMA will consider granting Licences to any third parties subject to agreement on fees and negotiated terms.

## 6. Alternative Licence Available via the PPCA

An alternative to obtaining Licences directly from WMA, is to obtain a licence for WMA sound recordings and music videos from the PPCA (to which WMA has granted non exclusive rights in its sound recordings and music videos). PPCA is able to grant blanket licences not only in respect of WMA recordings and music videos, but also may grant rights in sound recordings and music videos owned by other copyright owners. To find out more about licensing from the PPCA, please go to [www.pcca.com.au](http://www.pcca.com.au).

Whether you licence WMA sound recordings and music videos from WMA or PPCA is at your discretion.

## 7. Fees and Standard Terms

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:

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

The fee/royalty applicable may also vary depending on the rights the user 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 user agrees to undertake in respect of the WMA 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.

WMA does have some standard terms that are typically included in the types of Licences referred to in these Guidelines:

- (a) Advances: WMA usually requires an advance payment and/or minimum guarantee, and in any event, in all cases when WMA has not had a prior contractual arrangement with the user.
- (b) Term: WMA initially grants one (1) year licences.
- (c) Content Preparation and Delivery Fee: Where the user requires WMA to deliver it the content (rather than sourcing the content yourself), WMA typically charges a content preparation and delivery fee.
- (d) Reporting: WMA requires quarterly reporting for all Licences other than Licences where a one-off flat fee is charged. WMA also requires users to maintain and provide play logs. Webcasting Licences have further reporting requirements and are subject to international approval.
- (e) Territory: WMA grants Licences for the territory of Australia. If you would like to get a licence for New Zealand as well, or other countries in addition to Australia, this will be subject to a separate licence. WMA can put you in touch with the appropriate people in other territories if required.

## 8. Timing

Please note due to the number of licensing requests that come through the Business Affairs and Business Development departments, your request may take some time to process. Generally, WMA endeavours to negotiate and sign an agreement within 6 months of the initial request. However, some agreements may take longer and WMA may assess licensing requests in any order at its discretion.

## 9. Who To Contact

For all Public Performance and Communication Licences (other than webcasting Licences), please contact our Business Affairs Department by letter, email or fax

Address: PO Box 500, Crows Nest, NSW, 1585  
Email: [wma.businessaffairs@warnermusic.com](mailto:wma.businessaffairs@warnermusic.com)  
Fax: (02) 9950 1510

For Licences to webcast, please contact our Business Development Department  
Address: PO Box 500, Crows Nest, NSW, 1585  
Email: [wma.businessdevelopment@warnermusic.com](mailto:wma.businessdevelopment@warnermusic.com)  
Fax: (02) 9950 1510

## 10. Basic Information required

When contacting WMA's Business Affairs department and/or WMA's Business Development department, please provide the following information relating to your business in order for us to assess your request:

1. Name of Corporation/ sole trader/Licensee.
2. Address.
3. Australian Business Number (ABN).
4. Description of the type of service you are undertaking including customer proposition (i.e. a description of who the user expects their customer to be and a description of the end user/customer interface) and marketing activities (including marketing positioning and your sales message).
5. Projected Gross Turnover for the following 2 years and an estimated size of your audience.
6. Whether you require content (sound recordings and music videos) to be delivered to you or whether you will be sourcing content yourself.
7. Your Proposed Commercial Terms.