



WAHRNEHMUNG VON LEISTUNGSSCHUTZRECHTEN GMBH

Distribution Rules - Record Producers

LSG Austrian Music Licensing Company Ltd.

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Principles

1.

Based on an operating license granted under the Austrian Collective Management Organization Law 2016 (“Austrian CMO Law”), LSG as a trustee administers the rights, remuneration and participation claims of record producers, performing artists and film producers of music videos. These distribution rules apply to producers of “commercially published” sound recordings and describe the principles and rules according to which LSG’s income is distributed to the right holders. LSG is organized as a non-profit entity. After deducting the actual operating costs, all amounts are distributed to the right holders or assigned to LSG’s internal social and cultural fund (legal obligation according to § 33 Austrian CMO Law).

2.

The distribution is done in compliance with LSG’s distribution rules (§ 34 Austrian CMO Law), which are approved by LSG’s board in accordance with § 14 (6) (c) of LSG’s statutory agreement. The distribution is based on actual use, it is as accurate as possible provided that it is cost-effective. If actual use data are not available with an economically feasible effort, the distribution can be based on representative surveys of typical user behavior or the allocation of lump sums. Amounts that cannot be distributed (taking into account the procedure as defined in § 35 Austrian CMO Law) are added to the main annual distribution.

Right holders

3.

Producers of “commercially published” sound recordings (§ 76 Austrian Copyright Act) who are Austrian citizens or have their principal commercial seat in Austria and have concluded a rights administration agreement with LSG are entitled to take part in LSG’s distribution. Citizens and companies with a principal commercial seat in a member state of the European Union and the European Economic Area have the same status as Austrian citizens or companies based in Austria.

4.

Members of foreign CMOs are treated equally with LSG’s direct right holders in accordance with the respective bilateral agreements. The entitlement to claims of foreign right holders against LSG is based on the relevant provisions in the Austrian Copyright Act and on international copyright law.

“Commercially published” sound recordings

5.

“Commercially published” sound recordings are recordings that were primarily produced for the purpose of sales to end consumers. Due to the general availability of the recording on the consumer market, the producer has no realistic possibility to be remunerated directly by the user in addition to the normal sale of the recording on the market.

6.

Accordingly, there is no distribution entitlement for such recordings that were produced on behalf of or in cooperation with a broadcaster and are primarily intended or convenient for broadcasting purposes. This applies in particular to signations, jingles, sound logos, station IDs, sound bridges, background music, etc. produced for broadcasting purposes, even if they were subsequently released for commercial purposes. Broadcasters themselves can only become right holders of LSG with sound recordings that were produced and published for commercial purposes only and provided that it is ensured that the double function of the broadcaster as right holder and rights user is not abused when broadcasting their own recordings.

Information requirements

7.

Upon conclusion of the rights administration agreement, the right holders must provide LSG with all the necessary master data, in particular the company name, registered principal commercial seat, UID number, address, e-mail address and bank account (to ensure electronic communication, the provision of an e-mail address is mandatory) and to inform LSG immediately in writing of any changes to these master data. Otherwise, deliveries or information to the last known addresses are valid and LSG will pay debt-free to the last known bank account.

8.

Right holders must provide LSG, upon request, with all the information required for the management of the rights administration, including in particular the certificate of rights ownership and proof of qualification as a “commercially published” sound recording within the meaning of § 76 Austrian Copyright Act. In particular, contracts and other confirmations are accepted as evidence, but not the recording itself or repertoire catalogues.

Repertoire registration

9.

Furthermore, right holders are obliged to register their repertoire at LSG. This repertoire registration is primarily based on tracks, taking into account the specifications and IT formats set out by LSG. Right holders are given the option of registering their repertoire at label level, in which case remuneration will be claimed for the entire repertoire published under a registered label. The master data sheet and label registration form provided by LSG must be used for the registration of labels. In principle, the repertoire registration is valid from the beginning of the calendar quarter in which the registration is made or from the beginning of a later calendar quarter specified by the right holder. If the repertoire registration is completed by 30 June at the latest, the right holder can take part in the main distribution in September, provided that he represents the necessary rights for the distributed period. For the implications of the registration of tracks or labels on the distribution, see item 14. Right holders are liable to LSG for the correctness and completeness of the information provided by them and indemnify LSG from all related claims.

10.

Changes to the repertoire (at track or label level) must be reported to LSG immediately using the IT format and registration forms provided by LSG for this purpose. Changes to the registered repertoire are taken into account from the beginning of the calendar quarter following the respective information. In the case of double or multiple claims of the same track or label, a procedure for resolving such claims conflicts will be initiated by LSG and any monies for the recordings in question will be held in reserve and not paid out until clarification.

Statute of limitations

11.

Claims against LSG expire after three years in accordance with § 90 (2) Austrian Copyright Act, regardless of the right holder's actual knowledge of the facts on which LSG's obligation is based. See also item 18.

Distribution rules

12.

The accounting year is the calendar year. LSG distributes to record producers once a year, no later than nine months after the end of the financial year in which the revenues were collected. Amounts collected by other CMOs are distributed no later than six months after receipt of the monies from those CMOs. The deadlines mentioned are extended by the time required in each case to overcome obstacles to the distribution or payout, such as a lack of complete usage reports, insufficient information regarding the repertoire or the data related to the right holders. Right holders who received an annual payment of at least € 25,000 (net payment amount) in the main distribution for the previous year will receive a payment on account for the next distribution in December. The account payment is 50% of the net amount of the last distribution payment. For economic reasons and on a non-discriminatory basis LSG's board can set a different percentage.

13.

The total amount to be distributed to the right holders for an accounting year results from the collected revenues available for distribution less the operating costs of LSG shown as a percentage of the distributed money.

14.

LSG producers primarily distribute to right holders at track level provided that the tracks were properly registered with LSG (track level distribution). The right holders can opt for a distribution based on registered label names (label level distribution). In any case, registered tracks have priority over registered labels for the assignment of rights (see item 9).

15.

The principal basis for the allocation of revenues are the usage reports provided by broadcasters in Austria for a calendar year. The broadcasters relevant for distribution purposes must be approved by LSG's board, taking into account their economic impact, their contribution to diversity or their cultural value. The reported broadcasting time is matched automatically or manually with the repertoire registered with LSG and allocated to tracks or labels. Misleading, unusable or obviously erroneous usage reports are not taken into account. The usage time determined for a specific station is assigned to the remuneration paid by this station.

If a broadcaster pays a lump sum for several programs (e.g. ORF), these programs are weighted and the lump sum is assigned on this basis. This weighting has to be approved by LSG's board according to objectively justified and comprehensible criteria. Usage time allocated to regularly recurring signatures, jingles, sound logos, station IDs, sound bridges, background music, etc. is taken into account by one third, provided such recordings qualify for distribution (see item 6).

16.

Revenues from all other sources of LSG's income are allocated proportionally to the funds of public and commercial broadcasters that qualify for distribution and are distributed according to the usage reports of these stations, provided that these usage reports are sufficiently representative and their quality justifies this. Income clearly assigned to specific license agreements can exceptionally be excluded from this allocation system and be distributed separately, provided that this can be done with reasonable effort on the basis of available usage reports that allow a clear allocation to the right holders. Such exceptions must be approved by LSG's board. When assessing the principle of economic efficiency, the amount to be distributed, the distribution effort and the number of affected right holders must be taken into account. According to § 33 (2) Austrian CMO Law a share of the private copying income has to be assigned to LSG's internal social and cultural fund and is therefore excluded from the general distribution.

17.

The distribution is deemed to have been approved by the right holder if no objections are raised within a period of eight weeks after sending the distribution documents to the right holder (the time of the documented electronic sending of the documents to the right holder is assumed to be legally decisive). In principle, LSG is not obliged to investigate in uses declared as missing by individual right holders, unless such uses are documented in a form that enables a simple and cost-effective verification. This is without prejudice to a plausibility check carried out by LSG on certain usage reports.

18.

If the right holders of used repertoire cannot be located within the time limits according to item 12, the relevant monies have to be held in reserve. Furthermore, LSG has to take all necessary steps as foreseen in § 35 (2) Austrian CMO Act in order to identify and locate such right holders, in particular LSG will share the information on unclaimed repertoire with its own right holders and then with collecting societies with which LSG has concluded bilateral agreements, and finally publish the information on LSG's website. Amounts that are not distributable after the expiry of the period set out in § 35 (5) Austrian CMO Act are added to the main annual distribution.