

MASTER RECORDING LICENCE FACT SHEET

REMEMBER TO CHECK OUT THE MASTER RECORDING LICENCE CHECKLIST THAT GOES WITH THIS FACT SHEET. THE CHECKLIST OUTLINES KEY TERMS IN A MASTER RECORDING LICENCE, AND THIS FACT SHEET PROVIDES MORE DETAILS ON THOSE TERMS.

WHAT IS A MASTER RECORDING?

The “master” or “master recording” of a song is the final audio-only output of the recording process. It is the fully finished and mastered recording, whatever format it may be in. In practice, the master recording might be a digital sound file, delivered via a file transfer or hard drive. People preferring an analogue approach might make and store it on physical tape. It is distinct from the copies of that recording which appear in streamed or downloaded files, on physical pressings such as vinyl, CDs (yes, people still make those) and even revived formats like cassette.

HOW DOES COPYRIGHT PROTECT MASTER RECORDINGS AND WHAT IS A LICENCE?

Copyright protects the master recording separately to the music and lyrics of a song. The first owner of copyright in a master recording is usually the record label (for most signed artists) or the artist themselves (for most independent artists): that is, whoever made the recording. Technically this can include people who played on the recording, depending on the circumstances. (For more information about that see Arts Law’s Information Sheets on Copyright and Performer’s Rights). That situation can be changed by contract. For example, an artist’s recording contract might state that whoever made the master recording, the label owns it. The copyright owner has the following exclusive rights in the master recording:

- Reproduction – basically “copying” (e.g. by reproducing the sound recording on a new sound file, a CD or vinyl etc).
- Communication to the public (e.g. by streaming or transmitting it electronically online).
- Causing it to be heard in public (e.g. by playing it in a public venue).

Generally, copyright in a master recording lasts for 70 years from when it was first made public. During that time, the copyright owner is able to give others permission to use these rights in the master recording. This permission is called a "licence".

In this Fact Sheet, the copyright owner of a master recording will be called the "Licensor". The person or company to whom the Licensor is granting permission to use the master recording will be called the "Licensee".

WHEN DO YOU NEED A MASTER RECORDING LICENCE?

A "master recording licence" or "master licence" is a contract used when the Licensor wants to permit others to use and commercially exploit a master recording, without giving up copyright ownership. A master recording licence could be between an artist and an independent company, or an independent company and a major label, or a major label and its affiliate in another country.

Master licences can be flexible. They can deal with all of the copyright in a master recording, or just some of the rights (e.g. just reproduction on vinyl, and excluding digital streaming, say). They can deal with one master recording or many. They can cover any or all formats that the master recording will be exploited in, and they can limit rights to different geographical areas. It all depends on the contract. You can tailor a master licence to suit your needs.

Any restrictions or conditions on use of the master recording should be clearly stated in the master licence, so that everyone is aware of their rights and obligations to each other.

Key Terms of a Master Recording Licence

MASTER OWNER'S DETAILS (LICENSOR)

The Licensor will usually be the artist or the artist's record label. If you are a signed artist, it is common practice for the record label to own the master recordings of your songs under the terms of your recording contract. This means the record label, not you, has the right to enter this master licence. For more information, see our Fact Sheet and Checklist on Recording Agreements.

If you are an independent artist or band and you own copyright in your master recordings, then you enter the master licence yourself. When you are in an independent band or group, you might own copyright in the master recordings jointly with other band members (depending on what your band partnership contract says, if you have one). You need the consent of all co-owners of copyright to enter a master licence agreement.

TERM

The "Term" of the agreement describes how long the Licensee will have the right to use the master recording. If the Licensee is only using the music for one event or a small run of physical recordings, there is little reason for the Licensee to look for a multi-year Term. If, however, the Licensor is going to pay a substantial advance for the rights or dedicate substantial resources to marketing, they will be looking for a longer Term, so they get chance to earn a return on their investment.

At the end of the Term, the rights granted to the Licensee under the master licence will revert back to the Licensor, allowing them to negotiate new terms, or grant licences to other Licensees.

OPTIONS

It is common for labels to ask for the option to license future music produced by an artist. Under such an "option", when the initial Term of the contract comes to an end, the Licensee might have the option to extend it, or to bring new recordings by the artist into the licensing deal. The option is usually at the discretion of the Licensee. If the Licensee doesn't want to continue working with that artist (for a variety of potential reasons), they might not use their option. If, on the other hand, they see potential in continuing to distribute the artist's new recordings and to build the catalogue, they can use the option to keep the rights and relationship.

TERRITORY

Often labels and artists grant master licences to other labels because they do not have the expertise, money or networks to adequately sell a master recording in a specific territory. For example, an Australian label may licence a master to a US label because the Australian label doesn't have the networks or resources to sell effectively in that territory. So, it is important for Licensors to determine at the outset whether their proposed Licensee has the necessary resources skill and expertise to exploit the master effectively.

Describing the relevant territory carefully in the contract is important when a Licensor has multiple Licensees across the world. If the Licensor usually gives its Licensees exclusive rights to their master recordings, then no more than one Licensee can have the right to use the master recordings in the same territory (as none of the Licensees would then have exclusive rights in that territory).

TRACK DETAILS

METADATA

In addition to the basic details of each track, it is critical that the correct metadata is included in the master licence. This metadata is a key factor in how your music gets tracked across digital music platforms and, therefore, how it gets monetised. For example:

- International Standard Recording Code (ISRC Code): ISRCs are an international identification system for sound and music video recordings. Each ISRC is a unique and permanent identifier for a recording that can be encoded onto the product as a digital fingerprint. ISRCs allow recordings to be easily identified and tracked for the purpose of, for example, royalty payments. The Australian Recording Industry Association (ARIA) is the national agency for ISRCs in Australia.
- International Standard Musical Work Code (ISWC Code): ISWCs are unique, permanent and internationally recognised identifiers for musical works. They operate in a similar way to ISRCs but in relation to musical works rather than recordings. The ISWC agency in Australia is the Australian Performing Rights Association (APRA).

CREDIT LINES

In the credit line for a track (on metadata or the physical product), © is used to indicate ownership of copyright in the music and lyrics of a song, and ℗ is used to indicate ownership of copyright in the master recording (the "P" is for "phonograph" which is an old-fashioned word for a sound recording). The symbols can have legal significance as they give people notice that the recording is subject to copyright.

RIGHTS

EXCLUSIVITY

Licensees will usually require exclusive rights over the master recording in their territory. Licensees invest time and money in their territory to generate income, so they do not want to have to compete with additional Licensees over the same recordings.

As a Licensor, if you grant an exclusive, worldwide licence to a Licensee, then you can no longer use the master recording yourself unless you negotiate some carve-outs. If you want to use the master recording yourself or have the option of licensing it to other Licensees, you need to make the licence non-exclusive, or restrict the territory accordingly.

The contract should clearly describe what rights are given exclusively to the Licensee. For example, you might want to retain the right to sell the master recording yourself online, and grant a Licensee in the USA the exclusive right to physical sales in that territory only.

RIGHTS BEING GRANTED

The contract should be very clear about what rights are granted to the Licensee, preferably by reference to the Licensor's rights as the copyright owner. So, for example, the contract might say the Licensor has "the exclusive right during the Term and in the Territory to reproduce and communicate the Master Recording and to cause it to be heard in public, and to manufacture and sell copies of the Master Recording, in all media and formats".

The Licensee may also ask for some non-copyright rights, such as the right to use the artist's name, photos and biography, to assist with promotion in the Territory. Increasingly, Licensees are asking for the administrative credentials and/or monetisation rights for an artist's social media channels (and sometimes, the right to organise paid partnerships and product endorsement deals). These non-copyright rights should almost always be non-exclusive.

COLLECTION OF INCOME

Most Licensees will want the right to collect ALL income earned by the recording in the Territory, from which they will then credit the Licensor with a royalty. This will include collecting society income from the collecting societies like the PPCA and its affiliated organisations around the world who license and collect income from users such as broadcasters, venues, streamers and other digital service providers for the right to cause recordings to be "performed" or heard in public, or streamed (in the case of SoundExchange in the USA). If you're an artist, it is crucial that you register as a performing or featured artist with those societies, so that you can directly collect around the 50%-or-so share of that licensing income which is reserved by those societies under their distribution rules. If you don't register, all the money goes to the Licensee, and while it will eventually be credited to you as Licensor under the terms of your master licence agreement, it will get applied to recoupment and other costs, rather than paid straight through to you.

WORLDWIDE SYNCs

Synchronisation licences can be lucrative for Licensors and Licensees. It is very common for film and TV/Streamer producers to require worldwide rights, so their production incorporating your recording can be distributed worldwide. If the Licensee's Territory is less than the World, you will need to negotiate whether the Licensee can grant, from its Territory, worldwide synchronisation licences for audio-visual uses like film, television, ad campaigns or games. For additional information please refer to our Fact Sheet and Checklist on Synchronisation Licences.

Usually, the master licence provides that a Licensee will be able to provide a sync licence only if that licence request originated inside the Licensee's contracted Territory. That is, if your US Licensee was approached by a US film studio, they can grant it. This arrangement can motivate the Licensee to pursue extra-territorial syncs, to increase potential income from the master. This is a negotiation point. The Licensor must weigh up the pros and cons of allowing such extra-territorial rights.

COPYRIGHT CLEARANCES

If a Licensee uses, promotes and sells the master without obtaining the appropriate consents and clearances from all the copyright owners of that master, they will be in breach of the Copyright Act (within Australia, and equivalent legislation internationally) and will usually have to pay out all the owners for such a breach, plus, potentially their legal costs.

As Licensees do not write, produce or record the music, they may not know who all the copyright owners are in the music. To avoid this situation a Licensee will invariably require the Licensor to guarantee that all such clearances have been obtained. The contract will usually state that if the music has not been cleared by all copyright owners, the Licensor will be liable for all claims and court actions suffered by the Licensee. So, Licensors must take care to determine who owns what copyright incorporated in their master recording, and get written confirmation that all third party rights are cleared. For this reason, both Licensors and Licensees should be wary of samples used in their masters, as those samples are likely to be protected by copyright, and will require their own licences from their owners.

RELEASE COMMITMENT

The Licensor usually requires the Licensee to release the master within specific time periods. The Licensor may also require the Licensee to release the master at different times across different territories. For example, to coincide releases with your touring schedules as an artist. To ensure a timely release, the Licensor may require that if the Licensee does not meet delivery times, the rights granted under the master licence will revert back to the Licensor and the Term of the master licence will be over.

PROMOTION AND MARKETING

It is often the case that the Licensor will have artwork, promo material and other marketing products that the Licensee would like to use when promoting the master in the relevant territory. The Licensee may also like to make their own promo materials specific to their territory. In both cases, it is important to state if there are any specific requirements or restrictions around promotion and marketing. Additionally, it is common practice for the Licensee to recoup some of the costs it spends in producing such materials. Where this is the case, the Licensor may negotiate that all budgets and promo concepts are subject to their prior approval.

ADVANCES, ROYALTIES AND ACCOUNTING

ADVANCES

Advances are usually prepayments on future royalty payments, not a windfall. Future Licensor royalties will be kept by the Licensee and applied to the advance account until their pre-payment is recovered, or "recouped".

ROYALTIES

A "royalty" is a payment earned by granting a right. In the music business, royalties are commonly expressed as a percentage of a specific amount or source of income.

There are two main points to negotiate: what the royalty percentage is applied to, and the amount of the percentage. Where the parties land on either depends on bargaining power, industry custom and a range of other variables. There is not room in this sheet to set out a comprehensive guide to royalty rate negotiations, but here are the basics.

THE ROYALTY BASE

First, the contract should set out the "royalty base". In the past this was calculated on the nominal wholesale price of the sound recordings, back when physical sales were the main source of income. Now that the majority of income is gained from streaming and licensing etc, it is more common for master licence royalties to be calculated on a base of the income received by the licensee, from whatever source.

DEDUCTIONS

Industry custom provides that for every dollar that comes into a Licensee's pocket, there are certain categories of deduction that can be made before arriving at the royalty base on which the Licensor's royalty calculated. Typically, these deductions might include sales taxes, mechanical royalties (if the Licensee is paying them – see above), and then a much more negotiable series of deductions, such as "third party costs of earning such income", or "agreed marketing and promotion costs", or "sub-Licensee and agents' fees and commissions". These will need to be negotiated on a case-by-case basis with each deal.

The main thrust of negotiation for the Licensor is to ensure that every deduction is clear, and cannot be unexpectedly leveraged by a Licensee to reduce the funds in the royalty base. Some sensible caps might include ensuring that only agreed costs of marketing and promotion can be deducted. This is all generally done by negotiating a definition of so-called "net receipts", which usually means all the money that comes in, less the agreed categories of deduction.

ROYALTY RATE

As for the royalty percentage, or "royalty rate", there needs to be enough of a margin — after agreed costs are recovered — for the deal to be worthwhile for the Licensee to undertake the distribution and exploitation of the relevant master. The split can vary anywhere

between a rate of 20% to the Licensor through to 50%, or even more if the Licensor has more bargaining power. In the independent music business, it is not unusual for the parties to do a "50/50 net receipts" deal, where they essentially share the profit equally after the Licensee gets its agreed costs back from the gross income.

ACCOUNTING

There should be clear terms about how and in what periods the Licensee accounts to the Licensor for the royalties, and what information must be set out in the royalty accounting statements. Increasingly, this is being achieved through online portals through which Licensors can see what their masters have earned in a given period and what their royalty is. Typically, master Licensees will account on a quarterly or half yearly basis to the Licensor.

INSPECTION

The Licensor should have a contractual right to inspect the books and records of the Licensee to ensure that all the accounting is being done correctly. On the other hand, the Licensee will want to make sure that the Licensor only has a sensible amount of time to demand an inspection after each statement is issued, so generally, statements will be deemed binding and correct after two or three years has passed since they were sent to the Licensor. The contract might also state that if the inspection reveals a big enough mistake, the Licensee has to pay the Licensor's costs of the inspection.

TERMINATION AND POST-TERMINATION

Master licences usually end when the Term expires by time passing, but sometimes they end because one party does something that gives the other a right to terminate the contract (for example, by breaching the contract). A good master licence will set out what events amount to a breach and what happens if a breach occurs.

Once the master licence is terminated, the Licensee may require an additional time to sell off any of its physical stock relevant to the master. The sell off period is usually 3-6 months following termination. Alternatively, another way to clear the excess stock is to allow the Licensor to buy back the remaining copies — this can be a stipulation of the master licence agreement.

After termination of the master licence, the Licensor needs to regain control of various digital rights and assets. For example:

- The master licence should state when masters are to be taken down off digital music platforms by the Licensee.

- Assuming the Licensee has been collecting royalties for public performance of the masters from the Phonographic Performance Company of Australia (PPCA) or from other similar collecting societies (such as SoundExchange in the USA), registration of the masters with the relevant collecting society needs to be updated. Otherwise, the collecting society will continue to pay royalties to the Licensee.
- Any metadata and social media credentials provided to the Licensee need to be returned or transferred to the Licensor.

For more information, you can speak to your local Industry Association, the Arts Law Centre of Australia or a legal practitioner.



This checklist is an initiative of the Australian Music Industry Network. For more information visit www.amin.org.au.