



Distribution Rules and Practices

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1.Introduction

This document outlines the Australian Screen Directors Authorship Collecting Society Ltd (ASDACS) rules and practices in relation to allocating and distributing royalties to members, as well as international collecting partner members.

2.About ASDACS

Incorporated in 1995, The Australian Screen Directors Authorship Collecting Society Ltd (ASDACS) is a company limited by guarantee that represents audio-visual directors in Australia and New Zealand in the administration, collection and distribution of royalties that arise from directors rights and entitlements both domestically and internationally.

3.Aim

ASDACS' aim is to facilitate the collection and equitable return of funds to screen directors of cinematograph films and audio-visual works that may be derived from their status as authors or co-authors of such works and to generally support the interests of screen directors and the film, television and multimedia industries.

4.Articles of Association

ASDACS' constitution is outlined in its Articles of Association and Memorandum and is referred to as the Articles in this document. A copy of the Articles can be found on the ASDACS website www.asdacs.com.au.

5.Board of directors

ASDACS board of directors have the legal power and responsibility to determine the rules and practices in allocating and distributing royalties as outlined in this document. It is the board's intent to create rules and practices that are accurate and equitable to both members and international collecting society members.

Allocations to members by the board are final and binding, however where a person claims to be entitled to a share of the distributable amount but no such entitlement has been established, the board may, if it is satisfied that such entitlement exists, admit the claim at any time within one year of the date of determination of any allocation.

6.Code of Conduct

ASDACS complies with the Code of Conduct for Copyright Collecting Societies and submits an annual Code of Conduct compliance report along with all Copyright Collecting Societies in Australia. A copy of these documents can be found on our website www.asdacs.com.au.

7.CISAC

ASDACS is a member of the International Confederation of Societies of Authors and Composers (CISAC) and complies with CISACS' Professional Rules for Dramatic, Audio-Visual and Literary Societies. ASDACS submits compliance documents in accordance with these rules on an annual basis.

8.International collecting society agreements

ASDACS has unilateral and reciprocal agreements with international collecting societies (primarily based in Europe and South America) and abides by its contractual obligations as outlined in these agreements. The full list of ASDACS collecting society partners can be found on the ASDACS website www.asdacs.com.au.

9.International rights

The international royalties that ASDACS collects are derived from the secondary usage rights of directors within the contracted territory of collection. These rights vary from territory to territory and are not limited to:

- Private copying
- Rental and lending

- Simultaneous unaltered retransmission by cable of primary broadcasts initially transmitted by wire or wireless means
- Communication to the public by terrestrial means
- Satellite or cable
- Pay-per-view and video on demand
- Communication in public places of radio and television programs
- Projection in cinemas and similar establishments
- Sale for private use
- Use for educational purposes
- Any other uses of the Audio-Visual Works that the Contracting Society's Members are entitled to receive under the legislation of its Territories as Authors of the Audio-Visual Works at amended from time to time.

10.Membership

A director must be member of ASDACS in order to be eligible for the royalties it collects.

11.Precondition of Membership

Subject to the discretion of the Board in respect of an existing member who does not respond to a request to do so, from 29 October 2020, it is a precondition of a Person becoming or remaining a Member that they assign to the Society all past, present and future Retransmission Rights.

12.Eligibility

A Person is eligible for admission as a Member of the Society if the Person is either:

- a screen director with at least one credit on a publicly screened or commercially exploited audio-visual work; or
- a full director member of the Australian Directors Guild (ADG) or
- a full director member of the Directors and Editors Guild of New Zealand (DEGNZ); or
- the trustee of a screen director with at least one credit on a publicly screened or commercially exploited audio-visual work; or
- the executor or beneficiary under the will of a screen director with at least one credit on a publicly screened or commercially exploited audio-visual work.

13.Applicants

All applicants believed to meet the membership eligibility shall be submitted to the next board meeting for final approval by the board of directors. The board may request further information regarding the applicant's membership eligibility or reject the applicant's request for membership without explanation (in which case any membership fees charged to the applicant shall be fully refunded). Membership is non-transferable.

14.Registration of work

The member is required to register and verify their credited works with ASDACS on joining. While ASDACS endeavours to research and keep its members works up to date, it is the responsibility of the member to keep ASDACS informed of any new credited works for international and domestic registration.

15.International registration

In accordance with international standards set by CISAC, ASDACS registers all new members with Interested Parties International (IPI). ASDACS' uses the member's unique IPI identifier to claim and register the member's credited works with our international collecting society partners via the following (where relevant):

- Enquiry lists provided by our international collecting society partners.
- The full repertoire of ASDACS members works provided to our international collecting society partners by ASDACS.
- The full repertoire of ASDACS members works uploaded to the international documentation on audio-visual works (IDA) system.

16. Australian registration (Screenrights)

In accordance with the Australian Copyright Amendment (Film Director's Rights) Act 2005 No.130, 2005, directors are entitled to a share of royalties that arise from the retransmission of a free-to-air broadcast. Eligibility for these rights is dependent on the following conditions:

- The director must not have worked as an employee (under contract of service or an apprentice).
- The film must not be commissioned.
- The film must have been made post 19 December 2005.

In the case that ASDACS has registered a member or international collecting society partners members work with Screenrights in error, ASDACS will promptly withdraw the claim made on behalf of the member.

17. Retransmission rights definition

"Retransmission Rights" means the copyright rights of a Screen Director under section 98 of the Copyright Act insofar as they consist of the right as set out in section 98(6) to include the Cinematograph Film in a retransmission of a free-to-air broadcast, including but not limited to retransmission on pay or cable television and as a result of which a Screen Director is entitled to statutory payments for such retransmissions (as currently set out in Part VC of the Copyright Act and administered by the Audio-Visual Copyright Society Limited trading as Screenrights).

18. Resignation

Any member may resign from membership of the Society by giving not less than three months' notice in writing to the Secretary, and membership will cease at the expiration of the notice period or a shorter period of notice expiring at another time as the Board may (either generally or in a particular case) determine.

19. Re-assignment of retransmission rights

Once a Member ceases to be a Member following their resignation, ASDACS will promptly re-assign to the Member all that Member's Retransmission Rights, in respect of any and all Cinematograph Films. ASDACS will cease registering the directors credited works with its international collecting society partners and Screenrights. Any royalties received after the director's resignation will be paid out to the director without incurring a membership fee. A director who has previously been a member must wait 12 months before they can become a member again.

20. Termination

Subject to the Corporations Law, the Act and these Articles, the Board may at any time remove the name of a Member from the Society's register of Members if the Member ceases to be eligible for membership, including lack of response to the new membership retransmission assignment terms.

21. Dual membership

A member can choose to be a member of more than one collecting society; however, they must nominate which works or which territories they would like each society to collect for. Please note that some societies do not allow dual membership, therefore confirmation of dual membership must be provided in writing to ASDACS from the member, as well as the collecting societies the member wishes to join.

22.Non-member

From time-to-time ASDACS receives income for a director who is not yet member (non-member). In this case, ASDACS will make every endeavor to contact the non-member. If the non-member does not wish to join ASDACS and nominates another society to receive the payment on their behalf, ASDACS will pass on the payment within 12 months of instruction (provided they are a member of the nominated society). If, after four distribution years, ASDACS is unable to contact the non-member, ASDACS will transfer the income to the ASDACS trust fund.

23.Works

ASDACS collects and distributes royalties due to the director of a 'Cinematograph Film' (the work) as per the definition contained within the Copyright Act 1968 and the national legislation in any country confers a relevant right. This includes and is not limited to a film, television program, episodes of a television series, any other audio-visual work in a current or future format.

24.Definition of a director

A Screen Directors means persons who perform one or more of the following functions in the course of the production and/or creation of sound and images on any screen for the projection or display of audio-visual images, including but not limited to cinema screens, television screens and computer screens:

- (a) implementation of a budget, allocated by a producer;
- (b) the interpretation and execution of the concepts developed by a producer into a cinematic, television, digital or other screen format;
- (c) the planning, presentation and execution of on-screen cosmetics including shot selection, camera direction and treatment (shots, movement and editing) and the integration of staging treatments such as: make up, set design, camera, graphics, music, video tape or film items and voiceovers;
- (d) the integration and execution of the cinematic, television, digital or other screen production live to air, or to recording;
- (e) the direction of any style or size of the cinematic, television, digital or other screen production;
- (f) the direction of all cast and crew and any other creative talent.

25.Credit hierarchy

In order to be eligible for a royalty payment from the relevant directors rights due for the secondary use of a work, a member is required to be credited with one of the following principle directing credits:

- Creative Director
- Director
- Directed by
- Edit Director
- Field Director
- Series Director
- Studio Director
- Supervising Director

Should more than 1 director be credited with any of the above principle director credits, the royalties will be split evenly among all principle directors credited.

The following secondary directing credits are only eligible for royalty payments if there is no principle director credited on a title:

- A Film by
- Animation Director

- Drama Director
- Camera Director
- Gallery Director
- Location Director
- Live Action Director

Should more than 1 director be credited with any of the above secondary director credits, the royalties will be split evenly among all secondary directors credited.

The following tertiary directing credits are only eligible for royalty payments if there is no primary or no secondary credit listed:

- Compile Director
- Multi-Platform Director
- Outside Broadcast Director
- Post Director
- Post Production Director
- Reconstruction Director
- Re-enactment Director

Should more than 1 director be credited with any of the above tertiary director credits, the royalties will be split evenly among all tertiary directors credited.

26. Other credits

A person who believes they have done the work of a director, but have received a credit as a producer, field producer or any screen credits other than stated under 21. *Credit hierarchy* is not eligible for ASDACS royalties. All royalty income received by ASDACS is derived from the legal rights of a director within the territory the income is collected from and is strictly due to the credited directors of the work.

27. Disputes

If there is a dispute between screen directors over the payment share allocated for a work, ASDACS will withhold the payment until the dispute is resolved amongst the directors. All directors involved in the dispute must confirm the agreed outcome in writing before the payment will be released. If, after four distribution years, the dispute is unresolved all associated income will be transferred to the ASDACS trust fund.

28. Unresponsive member

ASDACS will attempt to contact the member or beneficiary due payment at least three times (email, phone, post) in a distribution year; if the member or beneficiary does not respond, the royalties will be transferred to the next year's distribution, in which case, three contact attempts will be made again. If the member does not respond after four distribution years, the royalties will be transferred to the ASDACS trust fund.

29. Untraceable director

All attempts will be made to find contact details for the member, non-member or beneficiary due payment using all means available. The list of untraceable directors will be published on the ASDACS website and circulated in its quarterly e-news to members each distribution year. If, after four years, the director remains untraceable, the income will be transferred to the ASDACS trust fund.

30. No director credit

If, after citing the screen credits of a work, ASDACS has verified that there is no director credited as per ASDACS' credit hierarchy, any royalties collected for that work would be transferred to the ASDACS trust fund after a period of four years.

31. Unidentifiable director / work

If the data received for a work or director is completely unidentifiable (unknown director or work), after four distribution years, any income received will be transferred to the ASDACS trust fund.

32. Inadequate Data

ASDACS uses best efforts utilising the data received to identify and allocate income to its members, as well as utilise available screening and broadcast data through further research. However, in the event that ASDACS is unable to match the income to the director or work, ASDACS will allocate the income using the most equitable means available. For instance:

- If the income received is a lump sum for a TV series (i.e. unable to match to the individual episodes), and there is more than one director credited on the series, the income will be split according to the over-arching series credit share for all directors on that series.
- If the income received is a lump sum and the income has not been allocated to a work or director on the data provided, the income will be evenly allocated to all directors listed (or in the case the running time of a program is listed, the income will be calculated across the series and allocated to directors as a % against the works running time).
- If a lump sum is received and there is no corresponding data available to match to an individual director or work – then the lump sum amount will be split across all directors who were due a payment from that society in the previous year or, if unavailable, all directors who are due a payment in the current distribution year, as a percentage against their total payment.

33. Interest

Any bank interest earned on royalties over the course of the financial calendar year (January 1 -December 31) will be distributed equally to members due royalties as a % based on total royalties in its annual distribution the following year.

34. Deductions

ASDACS deducts the following fees and taxes from members and international collecting society partners members royalties in its annual distribution:

a. Cultural and Charitable purposes (CCP) fund

A 4 % cultural and charitable purposes fund fee is applied to the gross amount of royalties due. The aggregated CCP fund is granted to applicants that fit the purpose of promoting, fostering and defending the interests of screen directors and is determined by the ASDACS board of directors annually.

b. Administration fee

An administrative fee (variable annual %) is applied to the gross amount. The percentage is based on the yearly operational expenditure against the total income received for the year and is confirmed in the ASDACS annual accounts (available on our website: www.asdacs.com.au).

| Collection year | Distribution year | Administration % |
|-----------------|-------------------|------------------|
| 2013 | 2014 | 25% |
| 2014 | 2015 | 24% |
| 2015 | 2016 | 22%* |
| 2016 | 2017 | 20% |
| 2017 | 2018 | 20% |
| 2018 | 2019 | 15% |
| 2019 | 2020 | 15% |

*note error in annual accounts: reported at 26% (included 4% cultural fund fee); however, the correct amount of 22% was deducted from members payments.

c. Membership fee

A 10% membership fee is applied to gross collection plus interest accrued less the CCP fund fee, administration fee and withholding tax. The membership fee is waived if you are:

- a **full** member of the Australian Directors Guild (ADG) or Directors and Editors Guild of New Zealand (DEGNZ).
- a beneficiary claiming on behalf of a deceased member.
- a retiree (more than the preservation age and/or no longer gainfully employed).

d. Withholding Tax

Withholding tax is applicable to ASDACS and international collecting society partners members who are international residents for tax purposes only and is calculated on gross collection plus any interest accrued. The withholding tax percentage applied is according to the international treaty between Australia and the member's relevant country of residence.

e. G.S.T

10% GST is applicable to members who are residents of Australia for tax purposes only and is applied to the CCP Fund fee, administration fee and membership fee. Note: GST charged on Screenrights payments is recouped by ASDACS and not passed on to members or international collecting society partners members.

35.Warranty and Indemnity

A member must submit a warranty and indemnity declaration to confirm that they are the credited director for the work listed, as well as the % split they are entitled to before they can receive the allocated royalty payment. A warranty and indemnity declaration is only required the first time royalties have been collected for that work, as listed on the royalty checklist provided. A director will only be required to confirm their payment and contact details thereafter to receive further payments for that work.

36.Adjustments

ASDACS may recover from any member any amounts paid in error by recovering the amount from the member or deducting the amount from any amount distributable to that member.

37.Cross-payments

ASDACS has cross payment agreements in place with the following collecting societies:

- Directors UK (DUK).
- Directors Guild of America (DGA).
- Directors Rights Collective of Canada (DRRC).

If any royalties due to members of any of the above societies is paid to ASDACS in error, ASDACS will pay the income to the correct society less an administration and CCP Fund fee. Likewise, the societies listed are required to return any income received for ASDACS members less their applicable society fees, which will be distributed as part of our annual distribution.

38.Timeline

ASDACS will distribute both international and domestic royalty income (due to its members and international collecting society members) received over the financial year no less than once a year, with distribution commencing no later than the end of the following financial year.

39.Minimum payment

Accumulated royalties allocated to a member, or international society member, must reach \$100AU before ASDACS will distribute the income in its annual distribution. If, after four distribution years the member's accumulative payment has not reached \$100AU, the royalty payment will be transferred to the ASDACS trust fund.

40. Deceased director

If a member has deceased and is due a royalty payment in its annual distribution, the legal beneficiary will be due the royalties on provision of at least one of the following documents confirming that they are the executor of the deceased member's estate:

- Testament letter from the solicitor handling the estate of the deceased.
- Last will and testament of the deceased director.
- Grant of probate letter.
- Statutory declaration.

41. Agent

A member can nominate in writing for an agent to represent them, however an agent must provide proof that the member has granted them power of attorney before they can sign any ASDACS documentation on behalf of the member.

42. Trust Fund

After a period of 4 years, any undistributed income will be transferred to the ASDACS trust fund. The board of directors will spend these monies to serve the best interest of the membership. A breakdown on how these funds were spent will form a compliance report as part of the annual Code of Conduct review for copyright collecting societies and made available to members on the ASDACS website. The report will include:

- a. reasons why funds remain undistributed
- b. steps taken to locate and distribute funds to rightsholders,
- c. the uses for which funds are to be applied.

43. Membership consultation

ASDACS will consult the membership prior to making any substantive changes to its' distribution policies, rules and practices.

44. Complaints

In accordance with the ASDACS complaints policy, all efforts will be made to respond within 48 hours of receipt of the complaint. If the member is not satisfied that the complaint has been adequately resolved, the complainant can choose to lodge a formal complaint for consideration and response by executive management and/or the board of directors. The formal complaint must be in written form and sent by email or post to:

*ASDACS
Suite 28, 330-370 Wattle St
Ultimo, NSW, 2007
asdacs@asdacs.com.au*

A written response from executive management and/or the board of directors to the formal complaint will be sent via email or post within 30 days of receipt of the request of the formal complaint. All formal complaints are lodged on the internal ASDACS complaints register and submitted to the Code of Conduct for Copyright Collecting Societies reviewer as part of its annual code of conduct report.