



JAMAICA ASSOCIATION OF COMPOSERS AUTHORS AND PUBLISHERS

DISTRIBUTION RULES

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SECTION A - ROYALTY DISTRIBUTIONS GENERALLY

1. ENACTMENT

- 1.1 Distribution Rules are enacted from time to time by the Board of Directors of the Jamaica Association of Composers, Authors & Publishers (JACAP) as a result of circumstances and assumptions made at the time of enactment or amendment and may be amended from time to time as a result of changes of those circumstances and assumptions.

1.2 Distributable Revenue

The distributable revenue may include:

- (a) licensing revenues less administrative expenses and provisions for reserved funds;
- (b) royalties received from affiliated societies less administrative expenses;
- (c) interest earned from investments after the deduction of administration fees received during relevant period;
- (d) the application of credits allocated to the various distribution pools.

Distributable revenue may vary from one period to the next.

- 1.3 Rules enacted or amended may be effective from the date they are enacted or amended by the Board of Directors and may take effect in the distribution immediately following their enactment or amendment.

2. DETERMINATION & INTERPRETATION

- 2.1 In these Rules, a reference to a Paragraph is a reference to JACAP's Articles of Association.

- 2.2 Subject to Rule 2.3 below, royalty allocations and distributions made by the Board are final and binding except that the Board may consider and, if thought fit, make any adjustment:

- (a) in response to any claim by any interested persons made within three years of the date of allocation or distribution concerned; or
- (b) otherwise, within three years of the date of the allocation or distribution concerned.

- 2.3 JACAP may recover from any interested persons any amounts paid in error by recovering that amount from the member or deducting the amount from any amount distributable to the member.

- 2.4 The Distribution Rules are determined by JACAP's Board of Directors from time to time pursuant to the authority conferred by Paragraph 51 of the Articles of Association. Such determinations are made with the intent and purpose of achieving a fair and equitable distribution of the income collected by JACAP.

- 2.5 Rules are applied and interpreted by JACAP's Board in a manner that best achieves this intent and purpose. If in the Board's opinion, this intent and purpose is being abused or has been abused, appropriate action may be taken in order to prevent or remedy this abuse or potential abuse.

- 2.6 If a member or affiliated society disagrees with the interpretation or application of a rule to their particular case or with any action taken by Management under 2.5, then that

member or affiliated society may submit a written request for review of that matter to management. Management shall review the matter at the next, management meeting, provided that the notice is submitted at least two weeks prior to make a determination and advise the member accordingly.

- 2.7 If, after management advises the member according to 2.6, the member disagrees with this determination, then the matter shall be submitted by management to the Board of Directors for its consideration. Any decision made, when approved by the Board of Directors, shall be final.

2.8 **RETROSPECTIVE CLAIMS AND SELF REPORTING SYSTEMS**

(a) The retrospective claim period for self-reporting systems for Live Performance Returns is limited to one year. That period may on application by the claimant be extended by JACAP Board for a further period not exceeding 1 year, in cases where extrinsic evidence deemed sufficient by the Board, is provided in support of the claim and or application.

(b) Where a retrospective claim is to be credited by JACAP, unless otherwise approved by the JACAP Board, payment shall be made in the next distribution of the General pool and shall be credited at the rate applicable to the distribution in which it is paid.

3. **CISAC, BIEM and CONTRACTUAL OBLIGATIONS**

- 3.1 In enacting Distribution Rules the Board is bound to observe and comply with the terms of agreements between JACAP and:

- a) its members; and
- b) its affiliated societies.

- 3.2 Although not binding, the Board endeavours as far as possible to comply with resolutions of the International Confederation of Societies of Authors & Composers (CISAC) and the Bureau International Des Societies Gerant Les Droits D'enregistrement et de Reproduction Mecanique (BIEM) with the intent and purpose of achieving a fair and equitable distribution of royalties.

- 3.3 Royalties collected and distributed to JACAP by affiliated societies are subject to the laws, conditions and practices applicable in the country of collection.

4. **DEFINITIONS**

Member Shares means those parts of a musical work that:

- (a) consist of music, lyrics, or both, that were created by a writer who is a member of JACAP or an affiliated society;
- (b) are published or administered by a publisher who is a member of JACAP or an affiliated society.

Non-Member Shares means those parts of a musical work that:

- (c) are not protected by copyright in (JACAP territory);

- (d) are created by a writer who is neither a member of JACAP or an affiliated society.
- (e) are published, co-published or administered by a publisher who is neither a member of JACAP or an affiliated society.

or do not fall within the definition of Member Shares.

- (f) "Non-member shares will be placed in a non-member account for a maximum period of three years. If the non-member does not become a member of any society during this period then the funds will be allocated under the discretion of the Respective Boards

Performance Credits means the performance usage points allotted to a musical work based on logged performances or similar data.

Publisher means a music publisher to whom a writer has assigned or licensed copyright in a musical work, or an entitlement to receive a share of performing and/or recording right royalties in respect of a musical work.

Writer means a composer, lyricist, or a songwriter living or deceased.

Feature or Visual Music: music which falls into one or more of the following categories"

- (a) music which is performed by, or represented on screen as being audible to one or more of the characters in the scene portrayed
- (b) music performed in video clips;
- (c) music performed in association with choreographed dance sequences
- (d) music performed live in its entirety or on camera by performers before the live audience of a television program.

Theme Music: Music which identifies a television programme, a film or a series at the beginning, end, or within the programme, film or series.

Background Music: Music which is neither feature nor theme music

Logo Music: Music that identifies a production company at the beginning and/or end (also called "bump ins" and "bump outs" respectively) of a television program, film or television music which is not a theme.

Program Promotions (Promos) Music: Music performed on radio or television to identify and promote a particular television/radio program, film or series.

Station Identification Music: A short musical item on radio or television performed to identify and promote a particular broadcasting station or channel.

Commercial Jingle: A short musical item on radio and TV to advertise a product or promote an event.

Advertisements: Music other than commercial jingles contained in advertisements (including infomercials) and public service announcements.

Feature Music: All music performed at live events by the primary artiste(s) performing at the event and that are featured as such in any advertisement or newspaper reviews.

Support: All Music performed at live events by the artiste(s) who are secondary to the headline artiste performing at the event and that are featured as such in any advertisements or newspaper reviews.

Background Music: Music which is performed by mechanical or electronic devices

5. ALLOCATION OF SHARES

5.1 Member Shares are entitled to a royalty allocation in accordance with JACAP's Rules. Non-member shares shall not be entitled to payment.

5.2 Notification of Shares and Re-Allocation of Copyright Shares

(1) Each member must notify in sufficient detail of the allocation of shares (or, "division of fees") and the full names of all interested parties, in each musical work to be administered by JACAP.

(2) Publishers are given the responsibility to submit registration for published works to reduce conflicts and duplications. Unless specific splits are agreed between the parties the splits agreed in the writer/publisher agreements with writers would apply

(3) Where the interested parties in any given title seek a re-allocation of shares for the title, their agreement thereto must be in writing and each such interested party and or holder of a share must consent in writing to the re-allocation

5.3 Works originating from JACAP repertoire

(1) The distribution of performing royalties to interested parties shall be based on the schedule of division of shares in Rule 5.7. The divisions are in every case subject to modification that may be agreed upon in writing between the interested parties, except that in no case may the publisher's share, or the combined share of all publishers of a particular work, exceed one-half of the total distributable royalties.

(2) Non-members shares for local works are held pending the admission to membership of the writers concerned, at which time the relevant fees are credited accordingly. Non-member writer shares held for writers not admitted by the end of the relevant distribution are returned to distributable revenue

5.4 For original vocal works, the lyricist will receive his normal share. If, however, a vocal version is made of a work originally in the form of instrumental, the lyricist receives a share only when the vocal version is performed.

5.5 Originating Works Sub-Published Abroad

(a) Where an agreement between the writer(s) and the original publisher of a work provides for a specific total publisher-share, that share alone is divisible in accordance with the provision of the sub-publishing contract.

(b) "If the original publisher is not a member, their share shall be payable to the society of the original writer.

(c) Where the original publishing contract does not specify the share payable to the writer(s) and publisher(s) respectively, then JACAP rules will apply by default, and as such JACAP shall allocate the publisher with a maximum of 50% of the total share and the remaining 50% shall be divided equally between the composers and authors of the work.

5.6 Foreign Originated Works

- (1) Where an author or composer is not a member, his share shall be paid to the society of the original publisher.
 - (2) If the work is unpublished, the non-member's writer share shall be maintained in the non-members account
- 5,7 In the absence of a specific notification or by notification of contractual agreements to the contrary the shares of a musical work are allocated as follows:

(a) Original Unpublished Works

- i.) Composition with lyrics:

Composer(s)	50%
Lyricist(s)	50%
- ii.) Composition without lyrics:

Composer(s)	100%
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- iii.) Public Domain composition with copyright lyrics

Lyricist(s)	100%
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(b) Original Published Works

- i.) Composition with lyrics:

Composer(s)	25%
Lyricist(s)	25%
Publisher	50%
- ii.) Composition without lyrics (or with public domain lyrics):

Composer(s)	50%
Publisher	50%
- iii.) Public Domain composition with copyright lyrics

Lyricist(s)	50%
Publisher	50%
- iv.) Composition with lyrics, composer share only published:

Composer(s)	25%
Lyricist(s)	50%
Publisher	25%
- v.) Composition with lyrics, lyricist share only published:

Composer(s)	50%
Lyricist(s)	25%
Publisher	25%

- 5.8 Contractual variations to the above rules are subject to the overriding rule that the share allocable to the writer or writers of a work shall not be less than 50%.

6.0 ARRANGEMENTS OF MUSICAL WORKS

- 6.1 Where an arrangement of a copyright musical work is made, no share is allocated to the arranger unless the share is established according to any agreement, in writing, between the copyright owner and the new arranger.

- 6.2 Where an arrangement of a public domain work is made, shares are allocated, as follows:

(a) Unpublished arrangement without lyrics (or with public domain lyrics):

Arranger	50%
Non-copyright element (returned to distributable revenue)	50%

(b) Published arrangement without lyrics (or with public domain lyrics):

Arranger	25%
Publisher	25%
Non-copyright element (returned to distributable revenue)	50%

(c) Unpublished arrangement with unpublished copyright lyrics:

Arranger	25%
Lyricist	50%
Non-copyright element (returned to distributable revenue)	25%

(d) Unpublished arrangement with published copyright lyrics:

Arranger	25%
Lyricist	25%
Publisher	25%
Non-copyright element (returned to distributable revenue)	25%

(e) Published arrangement with unpublished copyright lyrics:

Arranger	12.5%
Lyricist	50%
Publisher	12.5%
Non-copyright element (returned to distributable revenue)	25%

(f) Published arrangement with published copyright lyrics:

Arranger	12.5%
Lyricist	25%

Publisher	37.5%
Non-copyright element (returned to distributable revenue)	25%

7. TRANSLATIONS OF LYRICS AND ADDITION OR AMENDED OR SUBSTITUTED LYRICS

- 7.1 Where an authorised translation of copyright lyrics is made, or lyrics are changed or substituted with the authority of the copyright owner, shares are allocated as follows:

Published Works

Composer(s)	25%
Original Lyricist(s)	12.5%
Translator(s)	12.5%
Publisher(s)	50%

Unpublished Works

Composer(s)	50%
Original Lyricist(s)	25%
Translator(s)	25%

- 7.2 Where a translation of non-copyright lyrics is made, or non-copyright lyrics are changed or substituted, shares are allocated as follows:

Published Works

Arranger(s)	12.5%
Translator(s)	12.5%
Publisher(s)	25%
*Non copyright element	50%

Unpublished Works

Arranger(s)	25%
Translator(s)	25%
*Non copyright element	50%

* Returned to distributable revenue.

8. NOTIFICATION AND RE-ALLOCATION OF COPYRIGHT SHARES

- 8.1 Each member must notify JACAP of the allocation of shares and the full names of all interested parties and their composer/author/publisher designation, in sufficient detail, of each musical work to be administered by JACAP.
- 8.2 Each writer and publisher member must provide JACAP with written notification to an allocation of shares, including composer/author/publisher designation of a given work if that allocation varies from the allocations stated in Rule 5.

- 8.3 JACAP management may, at its discretion, request written notification, including copies of the relevant portion of contracts, even if the allocation of shares of a given work agrees with the allocations stated in Rule 5.
- 8.4 "Written notification" shall consist of either the appropriate form supplied by JACAP, properly completed and signed by all the interested parties, a letter or other correspondence signed by all the interested parties, a contract or contracts between the interested parties that establishes the allocation of the shares, or advice from an affiliated society.
- JACAP shall rely upon this notification until further advised by the JACAP member(s).
- 8.5 Members may reallocate the shares of a given work among themselves providing all the members affected by the reallocation agree, in writing, and provide JACAP with a copy of the agreement.

9. DISPUTES AND RESOLUTION REGARDING SHARES

- 9.1 If a dispute arises among members of which JACAP has been advised in writing by one of the interested parties or if an affiliated society advises JACAP of a dispute as to the allocation of the shares of a given work JACAP will, on being satisfied that the claim giving rise to the dispute:

(a) is not trivial or vexatious; and

(b) is supported by prima facie documentary evidence

place any distributions payable on account of those shares that are in disputes, in suspense for a period of two years from the time JACAP is advised that a dispute exists.

- 9.2 When JACAP has been notified in writing that, within this two year period, a legal action has been commenced, and then any distributions payable on account of those shares that are in dispute shall be deposited in an interest bearing account.

- 9.3 If a legal action has not been commenced within the two year period, or if the dispute is not otherwise settled, JACAP may at its option, remove the distributions payable from suspense and make a distribution according to the allocation of the shares prior to the date that the dispute arose.

- 9.4 If a legal action is commenced, within the two year period, and JACAP has been advised in writing by one of the interested parties of the existence of this action, then any distribution payable on account of those shares shall remain in suspense until the action is finally decided, discontinued or otherwise settled.

When JACAP is notified that the dispute has been resolved the distribution payment shall be made according to the terms of settlement, providing those terms do not conflict with the distribution rules.

- 9.5 JACAP offers Alternative Dispute Resolution (ADR), by providing mediation services to members, in the following circumstances, subject to all parties agreeing to submit to the procedure:

(a) Where writer members are in dispute as to the proportions in which royalty allocations are to be shared;

(b) Where writer and publisher members, are in dispute as to their respective

entitlements;

- (c) Where publisher members are in dispute as to their respective entitlements
- (d) JACAP does not offer mediation services where members are in dispute as to copyright ownership or alleged copyright infringement.

10 DISTRIBUTIONS IN SUSPENSE

- 10.1 If it comes to JACAP's attention that a member has notified JACAP as to allocation of shares of a musical work and such a work incorporates a portion of another musical work which is protected by copyright in JACAP territory, JACAP shall place any distributions payable in relation to the work notified to JACAP by the member in suspense. Upon the member providing written evidence of authorisation from the copyright owner of the original work that has been incorporated in the work notified by the member, JACAP shall remove the distributions payable from suspense and shall make a distribution according to the allocation of shares specified in the written authorisation.
- 10.2 JACAP uses its best efforts to identify all works appearing in its distribution analysis. Distribution credits not payable owing to lack of documentation are paid in the first distribution following identification of the interested parties and share details. Payment is at the dollar amount that is attributable to a performance credit in effect at the time the payment is made. No interest shall accrue nor be paid to the interested parties upon receipt of reliable documentation, except as provided in Rule 9.1. If work is not identified within three (3) years then revenue accrued is reallocated to distribution revenue

10.3 COMPLAINTS PROCEDURE

JACAP has the following Complaints Procedure open to members' if a member is of the opinion that a distribution has been dealt with by JACAP in an unsatisfactory manner:

- (a) If a member expresses to JACAP dissatisfaction with the information, explanation or response received from an officer of the organisation, the matter is referred to the JACAP MANAGEMENT.
- (b) JACAP MANAGEMENT will then write to the member within 14 days, responding to the member's complaint and advising of the member's right to take the matter further if still dissatisfied.
- (c) If the member remains dissatisfied, he/she may – by letter (including e-mail) addressed to JACAP MANAGEMENT – require the complaint to be dealt with by JACAP Board of Directors. The letter will be responded to by the Chairman of the Board within 7 days and will provide an estimate of the time required to deal with the complaint.
- (d) The complaint will be tabled at the next Board Meeting following receipt of the complaint. The Board will consider the complaint and take whatever action it considers appropriate in the circumstances. The member will be properly advised of the Board's decision and actions.

11. DISTRIBUTION RESERVE FUND

At the end of each financial year the Board may deduct from total commissions received for the relevant financial year for the purpose of establishing a reserve fund of such an amount as the Board considers, in accordance with good accounting practice, might be needed to meet unforeseen liabilities or contingencies. The deduction shall be calculated as a percentage of the commissions at such rate or rates as the Board shall fix from time to time. The current rate applied by JACAP is 5% which shall be placed in a Distribution Reserve Account.

SECTION B - PERFORMING RIGHTS DISTRIBUTION RULES

12. EXCLUSIONS

12.1 The following grand rights performances are excluded from JACAP's control:-

- (a) the performance of an opera, operetta, musical play, or similar work in its entirety insofar as it consists of words and music that were written expressly for it and when performed with the dramatic action, costumes or scenery of that work, except in cases where the performance is delivered as part of a pre-recorded audio-visual work (including but not limited to film and video).
- (b) the performance of a choreographic work in its entirety insofar as it consists of words and music or music alone written expressly for it and when performed with the live visual representation of that same choreographic work, except in cases where the performance is delivered as part of a pre-recorded audio-visual work (including but not limited to film and video).

12.2 JACAP does not collect or distribute royalties for excluded performances.

13. DISTRIBUTABLE REVENUE

13.1 Net distributable revenue is calculated by subtracting from JACAP's gross revenue:

- (a) the expenses of and incidental to the conduct, management and operation of JACAP; and
- (b) money applied by the Board for social and cultural purposes. monies set aside by the Board for transfer to reserves
- (c) monies set aside by the Board for transfer to reserves pursuant to Article 52 the Articles of Association.

13.2 JACAP's administrative expenses vary from year to year. The key expense items are: salaries, professional fees, licensing collection costs, amortised capital expenditure and information technology expenses or as stated in JACAP's audited accounts.

- 13.3 JACAP deducts 100% of members fees for the purpose referred to under Rule 13.1(b) above. All such deductions shall be credited to an account to be known as Members Fund.
- 13.4 For the purpose referred to under rule 13.1 (b) above, the percentage deducted from royalties payable to affiliated societies is determined by negotiation with these societies. All deductions made for social purposes shall be credited to an account to be known as the JACAP Social & Cultural Fund Account in accordance with CISAC standards.
- 13.5 JACAP deducts a maximum of 5% of the distributable revenue payable to members for the purpose referred to under Rule 13.1(c) above. All such deductions shall be credited to the Distribution Reserve Account.

14. SOURCES OF REVENUE – DISTRIBUTION POOLS

- 14.1 A separate distribution pool applies to each of the major identifiable sources of distributable revenue for which programme returns (or similar documentation) are provided to JACAP. The main distribution categories, some of which include a number of discrete pools are:
 - (a) Radio
 - (b) Television
 - (c) Cable & Satellite
 - (d) General
 - (e) Live Events
 - (f) Carnival (Festivals)
 - (g) Online
 - (h) Foreign Receipts
- 14.2 Distributable revenue received in respect of public performances, broadcasts or communication to the public for which no programme returns or similar documentation are available is apportioned to those pools which, in the Board's view, most accurately reflect the music performed.
- 14.3 Radio: All revenue from radio broadcast licence fees shall be pooled for the purposes of the Radio Distribution, except where the license fee is over \$2,000,000.00.
- 14.4 Television: All revenue from terrestrial, cable & satellite television broadcast licence fees shall be pooled for the purposes of the television distribution
- 14.5 Live Events: All revenue from live events shall be distributed based on play lists and other performance information received by JACAP. Where these lists or other information are not available the revenue from such licensing and events shall be pooled and distribution made on the basis of information gathered from similar events or sources as from time to time determined by JACAP.
- 14.6 Festival/Carnival/Crop Over Events: All revenue from Festivals/Carnival band launches and other pre-Festival launches and all events and broadcasts during the period
- 14.7 General: All revenue from performance licences other than broadcast, live events in respect of which the licence fee amounts to under \$200,000 shall be pooled for the purpose of the General Distribution.

- 14.8 Online: All revenue from online music services (including ring tones)
- 14.9 Foreign Receipts: Performance Royalties received from affiliated societies.

15. QUANTIFICATION OF MONETARY VALUE

- 15.1 Under the terms of JACAP's licence agreements, music users are obliged to report to JACAP details of the musical works ("logs" or "program returns") for which they have authorised the public performance or transmission. JACAP uses the information provided by its licensees, together with information from members, affiliated societies and third parties where appropriate, to identify the copyright owner(s) of each work that has been performed or transmitted and to calculate royalty entitlements.
- 15.2 The performance data is entered into JACAP's computer system against the reported musical works. On entry into the computer system, the reported usages are converted into "points" which are at the time of distribution given a monetary value.
- 15.3 To arrive at a monetary value the aggregate number of points in each discrete distribution pool, for the works reported during the relevant distribution period, is divided into the distributable revenue for that pool to arrive at a dollar value for a single point.
- 15.4 The distribution or performance "value" of each work is then calculated by multiplying the number of points it has accumulated in each distribution pool (a work may accumulate points during the period in several different pools) by the monetary value of a single point in the relevant pool.
- 15.5 Each work's total earnings are distributed to the writers (authors and/or composers) and publishers of that work in accordance with the work's registered allocation of shares.

16. DISTRIBUTION METHODS

If financially feasible and wherever possible, JACAP tries to ensure that the licence fees received from each music user are paid directly to the works performed or transmitted by that user. However, JACAP is mindful to ensure that the cost of collecting performance, communication and broadcast data and the cost of processing that data for distribution purposes, is commensurate with the value of the licence fees received. JACAP therefore uses a number of different distribution methods:

- 1. **direct allocation** – licence fees from major events are distributed, usually on a 100% (census) analysis, to the music used and reported to JACAP.
- 2. **sample analysis** – licence fees received from similar music users are pooled and distributed using a sample analysis of their logs.
- 3. **sample/direct allocation** – licence fees paid by a single licensee are allocated directly to the musical works used by that licensee. However, a sample reporting system is used.
- 4. **distribution by analogy** – licence fees are added to an existing distribution pool that is most similar in terms of its music content.

17. DISTRIBUTION - RADIO

- 17.1 Distribution: Those performances indicated on any logs and analysed within the radio broadcast distribution shall be distributed on terms and conditions agreed by the Board.

- 17.2 Programming Analysed: A representative number of days of programming information, based on the licence fee paid by radio stations, as determined by the Board, requested and received shall be included in each distribution period.
- 17.3 With licensing revenue of \$2,00,000.00 or more and for which programme returns have been received, distribution is done based on 100% census

OR

- 17.4 Those performances analysed for the radio broadcast distribution with the exception of commercial jingles, advertisements, programme identifiers and public service announcements shall receive 1 credit point for each performance.
- 17.5 Music used in commercial jingles, advertisements, programme and station identifiers and public service announcements on radio or television shall be distributed on terms and conditions agreed by the Board.

18. DISTRIBUTION - TELEVISION

- 18.1 Performance Points: Those performances indicated on any music cue sheets and analysed within the television broadcast distribution shall be weighted and distributed shall be distributed on terms and conditions agreed by the Board.
- 18.2 Programming Analysed: All of the programming information available and received by means of music cue sheets shall be included in each broadcast distribution. In the absence of music cue sheets licence fees received from television stations shall be pooled pro rata in accordance with the radio distribution. Distributions shall be on the basis of analogy with the radio broadcast logs.

OR

- 18.3 (a) licensing revenues from television, cable and satellite stations shall be distributed on the basis of cue sheets received. In the absence of reliable cue sheet information, distribution shall be on the basis of analogy with the radio broadcast returns;
- (b) the performances analyses for the television broadcast distribution with the exception of commercial jingles, advertisements, programme identifiers and public service announcements shall receive 1 credit point for each performance.

19 DISTRIBUTION – LIVE EVENTS

Those performances analysed for the radio broadcast distribution with the exception of commercial jingles, advertisements, programme identifiers and public service announcements shall receive 1 credit point for each performance.

20 GENERAL PERFORMANCES

All net distributable revenue from domestic sources other than for radio, television and live performances shall be pooled and distributions shall be based on representative samples of

programme returns received in respect of radio broadcasts, licensed events and premises and Festival events.

All performances analysed on the basis of analogy with radio broadcasts, live events and Festival events shall receive respectively one credit equal to a performance credit that is ordinarily attributed to a performance in radio distribution, live events distribution and Festivals distribution.

21 LIVE PERFORMANCES

- (1) All licensed live performances, other than at Crop-Over Festival events, with licensing revenue of \$200,000.00 or more and for which programme returns have been received, distribution is done based on 100% census. (the credit value shall be 8 credit points)
- (2) All program returns received for those live events taking place in each bi-annual general distribution period shall be included in the general distribution of the corresponding period.
- (3) For live events for which there is no admission fee or for which the licence value is less than \$200,000.00 becomes part of the General Distribution Pool. (the credit value shall be 4 points).

In the absence of complete and reliable programme returns in relation to particular events, all licence fees received from such events shall be pooled and distributions shall be on the basis of a representative sample of programme returns received from radio distributions.

22 FESTIVALS PERFORMANCES

- (1) Net distributable revenue in respect of licensed live performances at Festival/Carnival live events shall be allocated directly to **JACAP** members and affiliate societies on the basis of programme returns received by **JACAP** society for such events. Live performances during Festivals shall be credited with 12 credit points.
- (2) All programme returns received for those Festival events taking place in each General distribution period for which licences have been granted under the applicable tariff shall be included in each distribution.
- (3) For live events during Festivals for which there is no admission fee or for which the gross licence value is less than \$200,000.00, the credit value shall be 4 points.

23. DISTRIBUTION – ONLINE & RINGTONE

- 23.1 Those transmissions analysed within the Online and Ringtone distribution receive one point for each 15 seconds (or part) thereof for durations up to and including 1 minute. Durations longer than 1 minute receive 12 points.

- 23.2 A direct allocation of online and ringtone licences is used in cases where the licence fee exceeds \$200,000.00 or as agreed by the respective Boards and the automatic title match rate is 70% or higher.
- 23.3 If the licence fee is less than \$200,000.00 or as agreed by the Board or the automatic title match rate is less than 70%, the automatically matched titles will be paid the proportion of the total licence fee attributable to these works.

24. JACAP AWARDS

To writer members whose works are substantially performed in media not surveyed by JACAP or whose works have a unique prestige value for which adequate compensation would not otherwise be received, as determined by an independent panel appointed for that purpose by the members of the Board of Directors, using a prestige value assigned to places of entertainment, where such works would be uniquely performed or a total amount not to exceed 0.5% of the Society's total distributable revenues.

25. UNIDENTIFIED PERFORMANCES

- 25.1 Royalties allocated to a work later found to be in the public domain or are for any other reasons not distributed as for example, where there is a lack of documentation, will be placed in the Undistributed (Pending Identification) Royalties Special Account. Monies held in this account may be used to pay, after validation, performances which ought to but which were unpaid in previous distributions or other adjustments necessary for previous distributions. Where any sum of money in this account remains undistributed for a period of 3 years, the Board may in its discretion use any such sum or part thereof to cover distribution, other administration and capital expenses or distribute the same pro-rata to all parties receiving royalties during the preceding three-year period.

26. FREQUENCY AND TIMING OF DISTRIBUTION

- 26.1 JACAP shall distribute domestic performing rights royalties (excluding Carnival royalties) a semi-annual basis (June and December) in respect of licence fees collected during the preceding semi-annual periods to and 31 December and 30 June respectively. Supplementary distributions may be made including distribution of royalties in respect of previously unidentified performances.
- 26.2 Where the amount of royalties do not exceed \$500.00 and US\$100 respectively or as agreed by the Board for local members and affiliated societies the royalties will be withheld and distributed at the next distribution.

27. DISTRIBUTIONS TO AFFILIATED SOCIETIES

- 27.1 Royalty calculations to affiliated societies are calculated in every respect on the same basis as allocations to JACAP members.
- 27.2 The distribution to any affiliated society shall be made in accordance with reciprocal arrangements made between JACAP and the affiliated society.

28. ROYALTIES RECEIVED FROM AFFILIATED SOCIETIES

- 28.1 Royalties received from affiliated societies shall be distributed to members in the March and September distributions following receipt except where the distributable amount exceeds \$500.00 or as agreed by the respective Boards in which case the amount concerned is distributed approximately one month from receipt and analysis of the accompanying documentation.
- 28.2 JACAP shall deduct 5% of net royalties received from affiliated societies in respect of the costs associated with analysis and processing of such royalty payments.

SECTION C - RECORDING RIGHTS DISTRIBUTION RULES

29. DISTRIBUTION PRINCIPLES

- 29.1 Under the terms of JACAP's licence agreements, licensees are contractually obliged to report details of works reproduced in order for licence fees to be calculated and distributed. Where a blanket licence is issued details of the music usage should be supplied.
- 29.2 JACAP's distribution is based on the principle that the licence fees should be paid directly to the musical works reproduced where possible and economically viable to do so.

30. DISTRIBUTION METHODS

JACAP's distribution methods in relation to recording rights are as follows:

- 1. pay per use/work by work – licence fees are calculated and collected for each work reproduced.
- 2. direct allocation – blanket licence fees are paid by the licensees and are allocated directly to the musical works used by that licensee.
- 3. sample/direct allocation – licence fees are paid by a single licensee however a sample reporting system is in place.

31. EXCLUSIONS

If a member has excluded from JACAP's control any rights pursuant to Clause 3.1 of JACAP's Membership Agreement or the right of first recording under JACAP's Notification of Works form, JACAP will not make any distributions in relation to such excluded rights.

32. UNIDENTIFIED WORKS

- 32.1 JACAP uses its best efforts to identify all works submitted for licensing. In the event that JACAP is unable to identify the copyright owner of a work within a period of 1 year from the date of receipt of royalties JACAP shall be entitled to credit the payment for the work to the JACAP Cultural Fund.
- 32.2 All royalties under Rule 32.1 above shall be credited to an account to be known as the JACAP Cultural Fund Account.

33. DEDUCTIONS

33.1 JACAP is entitled to deduct and retain the following commission from:

- a) Members: the following percentages of all fees, royalties and other sums received in respect of the licensing of recording rights:
 - i. A maximum commission rate of 15% in respect of mechanical royalties
 - ii. A maximum commission rate of 20% in respect of all other sources of reproduction royalties (including broadcast mechanicals, synchronization and online & ringtones).

Such rates of commission may be varied at any time at the discretion of the Board but shall not exceed the indicated maximum amount 20%

- b) Affiliated societies in accordance with the terms of reciprocal agreements.

33.2 All commissions deducted under Rule 33.1 (a) above shall be credited to the Recording Rights Account.

33.3 JACAP deducts 1% of net royalties received from affiliated societies in respect of the costs associated with analysis and processing of such royalty payments.

34. SOURCES OF REVENUE

34.1 Distributable revenue means gross licence fees collected, less JACAP's commission.

34.2 The main licence and corresponding distribution categories are:

Audio-Products – Local Manufacture	Mechanical
Audio-Products – Importation	
Audio Visual Products – Importation	Synchronization
Audio Visual Products – Local Manufacture	
Carnival Recordings	
Broadcast Mechanicals	
Commercial Advertising	
Synchronization	
Online/Ringtones	Online
Foreign Receipts – Mechanical, Synchronisation & Online	Foreign Receipts

34.3 Distributable revenue falls into 2 main categories

- (a) work by work (or pay per use) – Mechanical, Synchronization, Ringtones
- (b) blanket pools – Broadcast Mechanicals, Carnival Recordings Online Reproduction

35. DISTRIBUTION – AUDIO PRODUCTS/ AUDIO-VISUAL PRODUCTS

Licence fees are calculated on a pay per use basis and the amount collected per work less commission is paid to the copyright owner(s) at the time of distribution.

36. DISTRIBUTION – CARNIVAL RECORDINGS

Distributable revenue from licences for Carnival Recordings is distributed to musical works based on data from the Carnival Performance Pool for the relevant licence period.

37. DISTRIBUTION – BROADCAST MECHANICALS

Distributable revenue from licences for Broadcast Reproduction/ Mechanicals is distributed to musical works based on data from the Carnival Performance Pool for the relevant licence period.

38. DISTRIBUTION – ADVERTISING / SYNCHRONIZATION

Licence fees are calculated on a pay per use basis and the amount collected per work less commission is paid to the copyright owner(s) at the time of distribution subject to Rule 41 below.

39. DISTRIBUTION – ONLINE

39.1 Licensed on a pay per use basis or blanket basis.

39.2 If licensed on a pay per use basis each work receives one point per 30 seconds or part thereof. If there is no information as to duration fees are distributed equally on a song occurrence basis.

39.3 If licensed on the basis of a blanket licence each work receives one point per 30 seconds or part thereof. If there is no information as to duration fees are distributed equally on a song occurrence basis. Distributions are made in the quarter the licence fee has been paid in full. The total licence fee less commission is distributed at the time of distribution to the copyright owner(s) of the works.

40. DISTRIBUTION – RINGTONES / DOWNLOADS

Licensed and distributed on a pay per use basis based on sales.

41. FREQUENCY AND TIMING OF DISTRIBUTIONS

41.1 Commencing in September 2007 JACAP shall distribute recording royalties on a semi-annual basis (September and March) in respect of licence fees collected during the

preceding semi-annual periods to 30 June and 31 December respectively. Supplementary distributions may be made.

- 41.2 Distributions will only be made for all invoices which are paid in full at the end of each 30 June and 31 December to the copyright owner(s) of the works.
- 41.3 Where the distributable amount to a member exceeds \$,000.00 the amount concerned shall be distributed approximately 7 working days from receipt of the full licence fee.
- 41.4 Where the amount of royalties does not exceed \$_____ and US\$100 respectively or as agreed by the respective Boards for local members and affiliated societies respectively, the royalties will be withheld and distributed at the next distribution.
- 41.5 Royalties received from affiliated societies shall be distributed to members at the same time as domestic royalties.

42. TRANSITIONAL ARRANGEMENTS

- 42.1 No Member Society of JACAP shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the Harmonized Distribution Rules.
- 42.2 A Member Society of JACAP which has been operating for less than 2 years and facing special problems in the implementation of a full distribution system is entitled to delay for a further period of three years the date of application.
- 42.3. A Member Society of JACAP availing itself of a transitional period under paragraphs 1 or 2 shall ensure that any changes in its distribution practices made during that period do not result in a lesser degree of consistency with the provisions of the Harmonized Distribution Rules.