

TOWGE Steering Committee - Best practice for invoicing of multi-territorial digital services (Dated 25 June 2019)

Introduction

The TOWGE Steering Committee has created a best practice recommendation for the principles licensors and their administrators should apply when invoicing digital services. The intention of this recommendation is to support an effective and functioning digital market, through accurate invoicing, the minimising of invoicing disputes and the application of fair market share based solutions for the payment of residuals.

The objectives of the Steering Committee in supporting this recommendation are:

- maximise the level of accurate invoicing,
- minimise the number and value of invoicing disputes, and
- provide a harmonized basis under which residuals can be paid to licensors

The recommendation contained in the table below is supported by: definitions and principles previously agreed by the TOWGE Steering Committee (ref: TOWGE Thesaurus WG terms definition v2.1 20171222); additional invoicing principles; and, examples that provide guidance on the recommendation's implementation in more complex scenarios.

It should be noted that this recommendation and the supporting information included seek to provide a comprehensive and robust guide to how invoicing digital services should be carried out. Clearly these guidelines cannot provide a definitive guide for every possible individual scenario that might be encountered.

The SC recognizes that further steps are needed to address any gaps in repertoire coverage.

The Recommendation

Invoicing Scenario	Claim
1. Authorised shares	Yes
2. Unmatched tracks	No
3. Copyright control shares	No
4. Unauthorised shares	No
5. Copyright / Authorship disputes	No
6. Public Domain works and shares	No

Definitions and notes of clarifications

1. Authorised shares

A term used for a share or work that has been registered by the owner of that share or a by a party authorised to make the registration on their behalf (e.g. Original Publisher, CMO of the creator, sub-publisher).

2. Unmatched tracks

A term for reported assets/usage lines that have not been identified and matched to an existing work in the licensor's or their administrator's database(s).

3. Copyright control shares

A term used for shares that have been identified and matched to an existing work but for which the specific owner(s) of the applicable share or the share percentage have not been registered at the point of invoicing.

For clarity, Authorised shares on the same work where there is a copyright control share should be invoiced by the relevant licensor or administrator representing these Authorised shares.

4. Unauthorised shares

A term used for shares on which the ownership has been identified using information other than a specific registration from the owner or a party authorised by the owner to make registrations on their behalf, i.e. the Original Publisher, CMO of the creator, sub-publisher.

Such information may have been derived from various sources, including information provided by other owners or contributors on that work, from DSP usage reports, internet search engines.

In the case of CISNET or other means of data exchange between societies, such as Fiche International, the data provided can only be considered as Authorised if:

- a) it is made available by the society who owns and/or controls the rights involved to the licensor or administrator,
- b) the repertoire owner does not license its own repertoire directly,
- c) the repertoire owner receives an exclusive mandate from its writers and has granted these rights to the Local Society,
- d) there is no local registration that contradicts the information, and
- e) the Local Society has verified that each writer is part of their mandated repertoire for the relevant local territory by use of the (SUISA maintained) IPI database

In such cases, the licensor or administrator seeking to treat this information as Authorised, and therefore making claims based on it, should ensure they correctly apply any agreed matching principles relating to the mechanical and performing rights involved in the relevant claim(s). For example, they should not claim for non-exclusive performing rights if there exists a mandate for the matching mechanical rights and an agreed matching principle as to the licensing alongside the associated mechanical rights.

5. Copyright / Authorship disputes

A term associated with ownership disputes at a work and/or agreement level in one or more licensors' and/or administrators' copyright database(s).

Licensors and administrators should always seek to resolve a dispute of this nature prior to invoicing and only include such claims in their invoice if they know beyond reasonable doubt the resolution of the dispute has been reached or will be reached in their favour. For example, in the case of clearly spurious claims disputing long established and reliable copyright data.

If a licensor or administrator does choose to invoice for a dispute of this nature, as they believe their information is from an authoritative source with a high degree of confidence, they should pay back the monies collected and make all necessary adjustments should it later transpire they have acted on incorrect information.

Under no circumstances should a licensor or administrator invoice for disputes in which they do not represent any of the parties involved, merely because they know there is a dispute.

If a licensor represents all parties involved in a dispute of this nature they may invoice for the disputed work or share involved on condition that they will either hold the monies involved until the dispute is resolved or pay through the monies involved to the disputing parties on some basis and then rectify any changes required once the dispute is resolved.

6. Public Domain

A term used for works or shares for which the copyrights have expired and are no longer protected by copyright law or other legal means, subject to the relevant rules that apply in individual territories.

Additional invoicing principles

The list below is by no means an exhaustive list of additional principles licensors and their administrations should apply, however it does cover certain important aspects that also support the goals of maximising accurate invoicing, minimising invoicing disputes and supporting fair market share based residual solutions.

Application of Copyright Ownership dates

When raising invoices, licensors and administrators should apply the copyright ownership picture that applies on the last day of the relevant usage period.

For example, if the usage period in question is Quarter 1 2019, the copyright ownership details that applied on 31 March 2019 are to be applied. If the usage period is January 2019, the ownership details that applied on 31 January 2019 are to be applied.

Application of Mechanical and Performing Splits

The TOWGE also produce a best practise document relating to Mech/Perf splits.

Updating the IPI database

When a composer or author member leaves a collecting society, that society should immediately update the IPI database with details of this event.

Composers and authors can and do change their society affiliation from time to time. When this occurs, it is important these changes are updated in the IPI Database in a timely manner to ensure licensors and their administrators can include and/or exclude shares relating to them correctly. For the new society to successfully update the IPI Database the society who the composer or author has left should first notify the IPI database of these details, otherwise the new societies' update will not be accepted.

It should also be noted that composers and authors may be affiliated to different societies for different territories and/or types of exploitation, the detail of which should be adhered to when raising invoices.

Updating licensor/administrator databases upon resolution of a dispute

When an invoicing or copyright / authorship dispute has been resolved it is vitally important the results of this resolution are immediately updated in the respective database of each licensor/administrator relied upon by the party whose claiming basis or data is incorrect.

Disputes of this nature may be resolved through trackers or exchanges of information between parties directly or through third party facilities, such as CLIC. Unless the results of such resolutions are immediately updated in the licensors' or their administrators' own databases it is highly likely the same dispute will reoccur in the invoicing of other DSPs, periods and/or territories. The databases involved include those used for copyright documentation, matching and royalty calculations.

Use of indicative information

The identification and application of authorised claims should be based on specific registration information from authorised parties only. Claims should not be based on assumptions or interpretations of other information, even when such information is provided by an authorised source but relates to other musical works or claims.

Examples

The list of examples below covers various, relatively complex, scenarios and the approach licensors and their administrators should follow in each of these cases.

Examples relating to Unauthorised shares

Scenario	Suggested invoicing approach
<p>Two un-published writers co-write a song and agree to share the ownership 50/50. Writer A submits a registration for their 50% share and informs their society Writer B is the other writer of the song and that both writers own 50% each.</p>	<p>The society should only claim both Writer A and Writer B's shares if it can confirm Writer B is a member of their society and has authorised Writer A to register claims on their behalf. Otherwise, the society should only claim for Writer A's 50% share.</p>
<p>An Option 3 Publisher registers a claim for 20% of a song with a European society on behalf of a writer they publish, who is a member of an Anglo-American society (e.g. ASCAP). As part of this registration the publisher notifies the European society of four other writers on this song, who they say also control 20% of the song each and are members of the same A-A society. The IPI information provided for the other writers confirms they are members of the A-A society in question. The European society has an agreement with this A-A society to collect Online performing rights for their writers in its territory unless the matching mechanicals have been withdrawn by an Option 3 publisher. In this case, no other registrations have been received for the remaining 80% of the song in question.</p>	<p>The society in this case should not invoice for any claims on this work, except the 20% registered with it by the publisher if it holds the mandate to represent that publisher for Online licensing. Even though it has an arrangement with the A-A society that might be relevant in these circumstances, the information it would be using to support such claim comes from the publisher of a different share on the work and is therefore from an Unauthorised source and should not be considered reliable for these purposes. For example, the details of the other writers and their percentages may not be correct, and even if they are, the writers in questions may be published by one or more other Option 3 publishers who have registered their share with other parties who will be invoicing for these correctly.</p>

Examples relating to Copyright / Authorship disputes

Scenario	Suggested invoicing approach
The copyright database a licensor or their administrator uses shows an unresolved copyright dispute between an Option 3 publisher they do not represent for Online licensing and a local publisher they do represent for Online licensing.	No claim should be invoiced until the party claiming is certain beyond reasonable doubt the dispute has or will be resolved in favour of the party they represent. Under no circumstances should a claim be made by anyone not representing any of the parties.
The copyright database a licensor or their administrator uses shows an unresolved copyright dispute between an Option 3 publisher they do not represent for Online licensing and a writer member of either their society or a different society that they do represent for Online licensing in their territory.	No claim should be invoiced until the party claiming is certain beyond reasonable doubt the dispute has or will be resolved in favour of the party they represent. Under no circumstances should a claim be made by anyone not representing any of the parties.
The copyright database a licensor or their administrator uses shows an unresolved dispute between an Option 3 publisher they <u>do</u> represent for Online licensing and either: a local publisher they also represent for Online licensing; or, a different Option 3 publisher they also represent; or, a writer member of their society or a different society they also represent.	Once again, no claim should be invoiced until the party claiming is certain beyond reasonable doubt the dispute has or will be resolved in favour of the party they represent. In the rare circumstance of a simple dispute between two parties represented by the same licensor under the same licence the claim in dispute might be invoiced by the licensors and the monies held pending resolution of that dispute.

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