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PPNZ – an introduction

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QUESTIONS & ANSWERS

What is PPNZ?

Phonographic Performances NZ (PPNZ) is a not-for-profit company administering the rights of local and international recording artists, record labels, distributors and any other rights holders within the New Zealand territory. PPNZ is responsible for licensing and collecting income from the broadcasting, reproduction and public performance of sound and video recordings. PPNZ can grant licences to any individual or business playing or using recorded music in the public arena.

What gives you the right to demand money?

Under New Zealand law (specifically, the Copyright Act 1994) copyright owners have a protection over how and where their work is used, which includes the right to determine on what terms their work is used publicly and commercially. Because individual permissions would be logistically impossible to obtain for the many millions of tracks available in the world, the copyright owners authorise PPNZ to administer a blanket licensing scheme to grant these permissions, and collect fees for such, on their behalf.

Who has to pay?

The business owner or operator who is responsible for music being played on that premises.

Where does the money go? How is it distributed?

All revenue PPNZ collects from licensing, less administration costs, is paid through to copyright owners, musicians or their representatives in this country so that they can continue to produce, create and distribute music. Revenue is distributed on the basis of

radio play data as this is the most representative data available. APRA, who administers copyright in the musical work, also distributes their fees in this way.

Nearly 25% of funds received in 2009 will be distributed to local artists, musicians, labels and distributors (900 plus members of Recording Artists and Producers Fund and NZ resident artists in the General Fund).

How much money do you collect and distribute?

PPNZ distributes nearly \$9 out of every \$10 it collects back to the rights holders.

How is the licence fee calculated?

For ease of use, PPNZ operates a three-tier price band arranged by industry type. This system allows both PPNZ and businesses to quickly and simply calculate what the licence fee due would be.

What is a public performance?

A public performance is the playing of a sound recording or the exhibition of a music video in public (i.e. a non-domestic environment).

Who needs a Public Performance Licence?

PPNZ issues licences for broadcast radio and television companies. It also licenses thousands of sites for public performance which include:

- Restaurants, Cafés & Bars.
- Dance Studios, Fitness Centres and Gyms.
- Football Grounds, Racetracks, Leisure Centres, Swimming Pools, Skating Rinks, Recreational Facilities, Sports Clubs, Public Parks and Domains, Community Centres and Halls, etc.
- Shops, Stores, Boutiques, Shopping Malls.
- Amusement Parks/Arcades.
- Theatres & Cinemas.
- Transport, e.g. Aeroplanes, Ferries, etc.
- Function Centres, Art Galleries, Exhibition Centres.

- Telephone 'On-Hold' Music.

How many businesses are licensed?

There are over 15,000 businesses in New Zealand licensed to publicly play sound recordings.

I already have an APRA licence – why do I need a sound recording licence?

There are two copyrights in any recording - the copyright in the song and the copyright in the recorded version of the song with the other performing artists. The practical effect of this distinction is that the broadcast or public performance of a recording requires two licences – one from APRA (representing the composition owner) and one from PPNZ (representing the recorded work owner/s). PPNZ is currently developing a joint website (i.e. with APRA) which will allow businesses to calculate and obtain both licences simultaneously, further simplifying the compliance process for businesses.

I have already paid for the CD, why do I have to pay again?

The purchase or possession of sound recordings does not carry any automatic right to use them publicly or commercially. Anyone who has watched a DVD or seen the copyright notice on the back of a CD case will be aware of the legal notice that includes the wording such as "not for public performance" - this is the restricted activity which PPNZ licences.

So this includes playing the radio and TV?

It's important to note that a business will not need a licence from PPNZ (but they will need one from APRA) if they exclusively play the radio or TV at their business premises and if admission to the premises is free. They will however need a PPNZ licence for radio/TV play if the place of business charges an admission fee to members of the public; and/or they are using the broadcast as part of a telephone "on-hold" system.

It is also important to note that PPNZ routinely sends investigators into premises to verify claims of exclusive radio use.

Does PPNZ collect for live performances?

No. PPNZ does not collect for live performances as there is no recorded music being performed. Live performance fees are collected solely by APRA.

What if I refuse to pay?

If PPNZ is unable to resolve compliance issues with a business, the matter is referred to our legal team at James & Wells (specialist intellectual property lawyers) for assessment as to further action. In some cases, but reluctantly, this may result in court proceedings being filed against a business for breach of the Copyright Act 1994. PPNZ considers it needs to prosecute in cases of very deliberate and continued breach to ensure it is fair to those businesses that do comply.

What are the penalties involved in not being “copyright compliant”?

The Copyright Act 1994 provides for a maximum \$150,000 fine and/or five years imprisonment for breaches of the law and depending on the severity of the offending. As above, PPNZ regularly pursues legal avenues to protect the rights of copyright owners.

The Australians have just had a massive increase in the licence fees. Is it only a matter of time before New Zealand follows suit?

PPNZ regularly reviews its licence fees and tariff structures (the last review being in 2005), and always welcomes the opportunity to see what other collection agencies are doing around the world (there are over 40 similar country agencies representing sound recording rights). However, PPCA in Australia and PPNZ are wholly independent of one another and operate under different economic circumstances.

PPNZ does propose to review its public performance tariffs in the near future but:

We note:

- A review means a review and not necessarily an increase.
- We will be consulting with the relevant industry associations at the time.
- A review will be cognisant of all the relevant circumstances – i.e. the use of music, the value of music to the industry, the economic circumstances of the participants to the industry, etc.

Why have we never heard of PPNZ before?

We have been around since 1957, but as we are a small team and operate as a not-for-profit, our resources for marketing and promotion are limited. We have a steady educational programme to spread the word, and believe we are raising awareness year-on-year.