



A S C A P

ASCAP DISTRIBUTION RESOURCE DOCUMENTS

This pamphlet sets forth the rules governing the ASCAP survey and distribution system, as adopted by ASCAP's Board of Directors.

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I. GENERAL PRINCIPLES OF THE ASCAP SURVEY

For many decades, ASCAP's distribution of royalties to its members has been guided by certain basic principles. ASCAP's goal is to design and implement an efficient survey and distribution system that enables ASCAP to track music use on radio, television, the Internet, live venues and other media, determine which music has been performed, and pay the appropriate writers and publishers. The ultimate purpose of the survey and distribution system is to ensure that royalty payments to members fairly reflect the value of performances in the various surveyed media, and that the methods and formulas employed for such distributions are fully and clearly disclosed to all members.

"Follow-the-dollar" is the chief principle underlying the survey and distribution system: The royalty distributions made to members for performances in each licensed medium should reflect the license fees paid by or attributable to users in that medium.

A second basic principle is that different types of performances have different values, even within the same medium. Those values should be reflected in a distribution system that gives appropriate weight to those different types of performances, and does so in an objective fashion that does not judge the subjective artistic merit of any work. The weights assigned to performances are set forth in the Weighting Rules and Weighting Formula, which are applied equally to all works regardless of their identity.

Another important principle is that distributions be on a basis that gives primary consideration to the actual performance of members' compositions as indicated by regularly conducted, objective and statistically valid surveys of performances in the various media licensed by ASCAP.

Whenever feasible, ASCAP conducts census or sample surveys of the performances of the compositions of its members. The surveys are designed and periodically reviewed by an independent survey expert. If a sample is used, licensees or performances may be grouped so as to reflect differences in economic value of performances insofar as practical, taking into account the added costs and complexity of finer groupings. Sample surveys are selected randomly and appropriately weighted by the use of statistical multipliers that reflect the share of the hours or performances sampled from the various groupings. The size of the sample may differ among the various groupings, and may take into account survey costs and considerations of sampling efficiency. Where survey costs and considerations of sampling efficiency make it impractical to conduct a sample survey of licensees or performances, proxies of performances in other media are used.

The census and sample surveys are designed to reflect accurately the number and identification of performances and the revenue attributable to those performances. Economic multipliers are applied to the results of the census and sample surveys to reflect the proportion of ASCAP's revenue attributable to the various groupings of performances or licensees. In determining the revenue attributable to television network broadcasts and, by analogy, that attributable to certain other similar media, ASCAP takes into consideration the revenue received from affiliated stations' commercial announcements adjacent to and reasonably attributable to network programs carried by the affiliates (often referred to as the "spot adjustment factor").

Surveyed performances may be identified from a variety of sources, including tape recordings of broadcasts (analyzed by ASCAP's music experts), computerized program schedules obtained from industry sources, logs furnished by broadcasters and other music users, and cue sheets prepared by film and television program producers.

There are billions of performances licensed by ASCAP each year. ASCAP is committed to distributing royalties for these performances to its members fairly, accurately, and efficiently.

II. THE ASCAP DISTRIBUTION SYSTEM

(A) Writer Distribution Options. As to ASCAP's domestic revenues, each writer hereafter elected to membership shall be given the option of electing to receive distribution on the (i) Averaged Performance Plan (Plan I as described in The Writers' Distribution Plan at p. 5) or on the (ii) Current Performance Plan (Plan II as described in The Writers' Distribution Plan at p. 6). Failure to elect a distribution plan within thirty (30) days following notice of election to membership shall be deemed an election to receive distribution on the Current Performance Plan. In addition, writer members shall have the following options:

(1) A writer who receives distribution on the Current Performance Plan shall have an option prior to October 1 of each calendar year to receive distribution on the Averaged Performance Plan effective for the first quarterly distribution in the succeeding calendar year.

(2) A writer who receives distribution on the Averaged Performance Plan shall have an option prior to October 1 of each calendar year to receive distribution on the Current Performance Plan effective for the first quarterly distribution in the succeeding calendar year.

(3) A writer may exercise either of the options set forth above by delivering written notice to ASCAP prior to October 1 of any calendar year.

(4) Each writer receiving distribution on the Four Fund Plan as of the date the Four Fund Plan was replaced by the Averaged Performance Plan shall be deemed to have elected to receive distribution on the Averaged Performance Plan as of the date the Averaged Performance Plan became effective.

(B) Awards. ASCAP may make special awards as follows:

(1) To writer members whose works are substantially performed in media not surveyed by ASCAP, 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 writer members of the Board of Directors, in a total amount not to exceed one-half of one percent (0.5%) of the Society's total distributable revenues.

(2) To members whose works or catalogs have a unique prestige value for which adequate compensation might not otherwise be received, as determined by Management following guidelines specified by the Board of Directors, in a total amount not to exceed three percent (3%) of the Society's total distributable revenues.

(3) To members whose works are performed on television and have a unique prestige value for which adequate compensation might not otherwise be received, as determined by Management following guidelines specified by the Board of Directors, in a total amount not to exceed one percent (1%) of the Society's total domestic distributable revenues.

(C) Publisher Distributions. Each publisher member shall receive distribution on a current performance basis as set forth in the "Publishers' Distribution Formula," at p. 11.

(D) Foreign Distributions. As to the revenue received by ASCAP from foreign sources, ASCAP shall make distribution to its writer and publisher members on a

current performance basis. If the revenue from any source exceeds \$200,000 per annum and to the extent that the reports furnished to ASCAP by such source allocate credit in reasonably identifiable form separately by compositions performed and indicate the members in interest, such distribution shall be made on the basis of performances of the compositions of its members as reported by such foreign source; otherwise, such distribution shall be made on the basis of the most reliable information ASCAP has as to foreign performances generally.

(E) Credit Amounts. ASCAP shall not promulgate any rules making distinctions as to the amount of credit given to various works or performances except as set forth in the "Weighting Rules" at p. 13-16.

(F) Public Domain Works. ASCAP shall grant no performance credits to any member for performances of compositions occurring after they are in the public domain, provided, however, that ASCAP may grant performance credits to either a publisher member or a writer member, or both, for performances of copyrighted arrangements of public domain works where the recipient of the performance credit holds a valid existing copyright covering said arrangement.

(G) Distribution to Certain Non-Member Writers. ASCAP may make distributions to writers who are not members of the Society with respect to their compositions published by ASCAP members, provided that performing rights in such compositions (1) have not been granted to any other performing rights licensing organization for performance in the United States, or (2) if granted, shall have been released by such organization. Any such distributions shall be computed on a current performance basis under Plan II at p. 6.

(H) The Radio Feature Premium. The Society may make additional payments in a fiscal survey quarter year to works achieving high level of feature performances in the Society's radio survey, as such levels shall be determined by the Society; provided, however, that such additional payments shall be based solely on the number of radio feature performance credits received by the work in such fiscal survey quarter year.

(I) Television Premium. The Society may make additional payments for theme, underscore, and feature performances in highly rated syndicated series in three groupings: (1) series on local television stations, (2) series on primetime network television, and (3) series on daytime network television.

(J) Cash Basis of Distributions. All distributions are made on a "cash," rather than an "accrual," basis. Thus, for example, in each calendar quarter, domestic distribution is made of the distributable revenue budgeted to be received during that quarter. The amount of each member's distribution in that quarter is based on surveyed performances that occurred two (for Publishers) or three (for Writers) quarters previously, those prior performances representing a proxy of the performances which have occurred during the quarter for which distributable revenue is being paid. Resigned members receive distributions based only on the distributable revenue received through the date of their resignation, subject to the Society's rules and regulations applicable to resigning members.

III. THE WRITERS' DISTRIBUTION PLANS

Plan I: Averaged Performance Plan

The following rules shall govern any distribution under Plan I referred to in Paragraph II(A):

(a) **The Current Performance Distribution Fund**

Distribution to each writer member from this fund shall be calculated on the basis of the number of performance credits of such writer recorded during the most recent available fiscal survey quarter year, multiplied by the performance credit value for that quarter year, multiplied by not less than twenty (20) percent.

(b) **The Five Year Averaged Performance Distribution Fund**

Distribution to each writer member from this fund shall be calculated by (i) multiplying the individual writer member's performance credits for not more than the most recent twenty (20) fiscal survey quarter years (including the current fiscal survey quarter year) in which the member received distribution under this system by the corresponding performance credit value for each such quarter year, (ii) averaging the results of those calculations and (iii) multiplying the average by not more than sixty (60) percent.

(c) **The Ten Year Averaged Performance Distribution Fund**

Distribution to each writer member from this fund shall be calculated by (i) multiplying the individual writer member's performance credits for not more than the most recent forty (40) fiscal survey quarter years (including the current fiscal survey quarter year) in which the member received distribution under this system by the corresponding performance credit value for each such quarter year, (ii) averaging the results of those calculations and (iii) multiplying the average by not more than twenty (20) percent.

(d) In computing distributions under this Plan, performance credits recorded during quarters when the member received payment on a current performance basis shall not be considered.

Plan II: Current Performance Plan

The following rule shall govern the current performance option referred to in Paragraph II(A):

An electing writer member shall receive a distribution each quarter which bears the same relationship to the share of distributable revenues to all electing writers as the writer member's current performance credits in the applicable fiscal survey quarter year bear to the total performance credits of all electing writer members for such period.

IV. THE WRITERS' DISTRIBUTION FORMULA

The writers' distributable revenues shall be computed for each calendar quarter and distributed quarterly.

Revenues distributable under Plan I (the "Averaged Performance" system) shall be computed and distributed as provided in Sections I through III hereof (the Current Performance Distribution Fund, Five Year Averaged Performance Distribution Fund, and Ten Year Averaged Performance Distribution Fund, respectively). Revenues distributable under Plan II (the "Current Performance" system) shall be computed and distributed as provided in Section V hereof.

I. The Current Performance Distribution Fund

Distribution to each writer member (hereinafter called "writer") from this fund shall be calculated on the basis of the number of performance credits of such writer recorded during the most recent available fiscal survey quarter year multiplied by the performance credit value for that quarter year, multiplied by twenty (20) percent.

II. The Five Year Averaged Performance Distribution Fund

Distribution to each writer from this fund shall be calculated by (i) multiplying the individual writer's performance credits for the most recent twenty (20) fiscal survey quarter years (including the current fiscal survey quarter year) in which the writer received distribution under this system by the corresponding performance credit value for each such quarter year, (ii) averaging the results of those calculations and (iii) multiplying the average by sixty (60) percent.

III. The Ten Year Averaged Performance Distribution Fund

Distribution to each writer from this fund shall be calculated by (i) multiplying the individual writer's performance credits for the most recent forty (40) fiscal survey quarter years (including the current fiscal survey quarter year) in which the writer received distribution under this system by the corresponding performance credit value for each such quarter year, (ii) averaging the results of those calculations and (iii) multiplying the average by twenty (20) percent.

IV. New Members

A writer member is a new member when first elected, or when re-elected if the writer had previously been a member of ASCAP or a member or an affiliate of another United States performing rights licensing organization.

In the case of a new member, distributions shall be calculated in accordance with the foregoing rules or with Section V hereof, depending on the distribution system elected by the new member.

Writers' Distribution Formula

(A) Distributions to a new member shall be based on performances of the member's works included in the Society's repertory following the writer's election to membership and recorded in the Society's survey in the same fiscal survey quarter year(s) as are then applicable for all other writer members.

(B) The Society may accelerate all or part of the distributions to a new writer member for performance credits received pursuant to subsection (A) above and performance credits recorded during the writer's first two years of membership, provided that all new writer members are treated alike.

(C) The option for new members to elect distribution on the Averaged Performance system described in Sections I-III hereof shall be available only during the period immediately following a member's election to membership; except that in the event a former member is re-elected to membership, the member shall have the option to elect distribution on the Averaged Performance Plan on a prospective basis only.

V. Current Performance Election

The distributable revenue for all writers receiving distribution on a current performance basis (either by election under Paragraph II(A)(2) or pursuant to Section IV hereof) shall be the total distributable revenue less amounts distributed pursuant to Sections I through III hereof.

(A) A writer member shall receive a distribution each quarter which bears the same relationship to the share of distributable revenues to all current performance writer members as the writer member's current performance credits in the applicable fiscal survey quarter year bear to the total performance credits of all current performance writer members for such period.

(B) An election made pursuant to Paragraph II(A)(2) must be made in writing prior to October 1 of each calendar year and shall apply to the first distribution in the succeeding calendar year and thereafter for a period of not less than four calendar quarters beginning with the quarter in which it first becomes effective until cancelled by notice in writing. Notice of cancellation given prior to October 1 of any year pursuant to Paragraph II(A)(1) shall be effective for the first distribution in the succeeding calendar year and shall apply thereafter for a period of not less than four calendar quarters until canceled by notice in writing.

(C) Distributions under this Section V shall be made to writers who are not members of the Society with respect to their compositions which are published by ASCAP members, provided that performing rights in such compositions have not been granted to any other performing rights licensing organization for performance in the United States, or if granted shall have been released by such organization.

*Writers' Distribution Formula**VI. Resigning Members*

(A) If, in the case of a resigning writer member, the Society shall continue to have the right to license the performing rights in the United States to a work or works of such writer as a result of continued membership in the Society of one or more of the members in interest with respect to such work or works, and if no other performing rights licensing organization has any such right, distributions shall continue to be made to such resigning member subsequent to his resignation from the Society—for so long as the Society retains such licensing right, and no other performing rights licensing organization has any such right—on the basis of performance credits recorded for such work or works. The Society may require such resigning member to acknowledge that the Society retains such right and that no other performing rights licensing organization has any such right. In the event such resigning member fails so to acknowledge, such resigning member shall not be entitled to any payment pursuant to these provision.

A writer or publisher member who has received an advance may not resign from membership before the advance has been fully recouped except that if an advance has not been fully recouped within five years, the member may thereafter repay the unrecouped balance and exercise the right to resign.

Anything to the contrary notwithstanding, the Society may, at its option, deny resigning writer members the right to receive payment on any basis other than a current performance basis as defined in Section V above, provided that such option shall be exercised as to all resigning writer members alike.

(B) With respect to all other works of the resigning writer member, distributions shall continue to be made to such resigning member subsequent to his resignation from the Society on the following basis:

(1) An amount shall be calculated as to each of the funds described in Sections I-III hereof (or pursuant to Section V) based on performance credits recorded for such works, such amount to be calculated in all respects in accordance with the provisions hereinbefore set forth;

(2) Such amount as to each fund (or calculated pursuant to Section V) shall be separated into two portions, the first of which shall bear the same ratio to the entire amount as the revenues received from unexpired licenses in surveyed media by the Society bears to the aggregate of all revenues received by the Society from all licensees during the preceding fiscal year, and the second of which shall bear the same ratio to the entire amount as the sum of revenues received by the Society from licenses in media not surveyed bears to the aggregate of all revenues received by the Society from all licensees during the preceding fiscal year;

Writers' Distribution Formula

(3) The first portion shall, as to each fund (or calculated pursuant to Section V), be distributed to such resigning member on the basis of performances made under unexpired licenses in surveyed media made prior to the resignation of such member;

(4) The second portion shall, as to each fund (or calculated pursuant to Section V), be distributed to such resigning member on the basis of performances made under licenses in surveyed media for four quarterly distributions after the resignation of such member (and not thereafter), the first such distribution to be equal to the full amount of such portion, the second such distribution to be equal to 75% of such portion, the third such distribution to be equal to 50% of such portion, and the fourth such distribution to be equal to 25% of such portion.

V. THE PUBLISHERS' DISTRIBUTION FORMULA

Publishers' Distribution Formula

The publishers' distributable revenues shall be computed for each calendar quarter and distributed quarterly. A publisher member shall receive a distribution each quarter which bears the same relationship to the share of distributable revenues to all publishers as the publisher member's performance credits in the applicable fiscal survey quarter year bear to the performance credits of all publisher members for such period.

The first distribution to a new publisher member shall be made in the first fiscal distribution quarter following the publisher's election to membership and shall be based on the number of performance credits of such publisher in the fiscal survey quarter first serving as a basis for distribution to all other publishers, multiplied by the value of a performance credit for such quarter.

Resigning Members

If, in the case of a resigning publisher member, the Society shall continue to have the right to license the performing rights in the United States to a work or works of such publisher as a result of continued membership in the Society of one or more of the members in interest with respect to such work or works, and if no other performing rights licensing organization has any such right, distributions shall continue to be made to such resigning member subsequent to his resignation from the Society—for so long as the Society retains such licensing right, and no other performing rights licensing organization has any such right—on the basis of performance credits recorded for such work or works. The Society may require such resigning member to acknowledge that the Society retains such right and that no other performing rights licensing organization has any such right. In the event such resigning member fails so to acknowledge, such resigning member shall not be entitled to any payment pursuant to these provisions. Anything to the contrary notwithstanding, the Society may, at its option, deny resigning publisher members the right to receive payment on any basis other than a current performance basis as provided above, provided that such option shall be exercised as to all resigning publisher members alike.

With respect to all other works of the resigning publisher member, distributions shall continue to be made to such resigning member subsequent to his resignation from the Society on the following basis:

- (1) An amount shall be calculated based on performance credits recorded for such works, such amount to be calculated in all respects in accordance with the provisions hereinbefore set forth;
- (2) Such amount shall be separated into two portions, the first of which shall bear the same ratio to the entire amount as the sum of revenues from licenses in surveyed media received by the Society bears to the aggregate of

all revenues received by the Society from all licensees during the preceding fiscal year, and the second of which shall bear the same ratio to the entire amount as the sum of revenues received by the Society from licenses in media not surveyed bears to the aggregate of all revenues received by the Society from all licensees during the preceding fiscal year;

(3) The first portion shall be distributed to such resigning member on the basis of performances made under unexpired licenses in surveyed media made prior to the resignation of such member;

(4) The second portion shall be distributed to such resigning member on the basis of performances made under licenses in surveyed media for four quarterly distributions after the resignation of such member (and not thereafter), the first such distribution to be equal to the full amount of such portion, the second such distribution to be equal to 75% of such portion, the third such distribution to be equal to 50% of such portion, and the fourth such distribution to be equal to 25% of such portion.

VI. THE WEIGHTING RULES

In awarding credit for a performance appearing in the Society's survey, no distinction shall be made on the basis of the identity or use of the work performed, except as provided in these Weighting Rules.

(A) As used in these Weighting Rules:

(1) "*Theme*" shall mean a musical work used as an identifying signature of a radio or television personality or of all or part of a radio or television program or series of programs. A musical work (other than a jingle) used in conjunction with an advertising, promotional or public service announcement shall receive the credit proposed by the Society as explained in its Application for Amendment to the Consent Decree and Notice to Members in April 1994.

(2) "*Background Music*" shall mean mood, atmosphere or thematic music performed as background to some non-musical subject matter being presented on a radio or television program. A vocal or a visual instrumental rendition which is a principal focus of audience attention shall not be regarded as background music regardless of the context in which performed.

(3) "*Jingle*" shall mean an advertising, promotional or public service announcement containing musical material (with or without lyrics), where (a) the musical material was originally written for advertising, promotional or public service announcement purposes or (b) the performance is of a musical work, originally written for other purposes, with the lyrics changed for advertising, promotional, or public service announcement purposes with the permission of the ASCAP member or members in interest, or (c) the performance is of a musical work, originally written for other purposes, which does not have at least one hundred and fifty feature performance credits recorded in the Society's radio and television surveys during the five preceding fiscal survey years.

(4) "*Cue Music*" shall mean music used on a radio or television program to introduce, but not to identify, a personality or event thereon. The term "cue music" includes, but is not limited to, introductions, "play-ons" and "play-offs."

(5) "*Bridge Music*" shall mean music used on a radio or television program as a connective link between segments or portions thereof.

(6) "*Use*" shall mean a performance of a composition reported by the ASCAP survey.

(7) (a) “*Feature Performance*” shall mean any performance which is a principal focus of audience attention and which constitutes a musical subject matter on a radio or television program and is not a performance as a theme, jingle, background, cue or bridge music, or in conjunction with an advertising, promotional or public service announcement or a logo. A visual instrumental or vocal performance shall be presumed to be a feature performance unless such performance is as a theme or a jingle or in conjunction with an advertising, promotional or public service announcement or logo or is not a principal focus of audience attention.

(b) “*Visual Instrumental Performance*” shall mean a performance by a musician or musicians who are seen by the television viewing audience.

(c) “*Vocal Performance*” shall mean the performance of the lyrics of a composition or the on-camera humming or whistling of the music of a composition.

(d) “*Musical Subject Matter*” shall mean the presentation in a program of an activity (i) which normally involves the performance of music—such as singing, playing a musical instrument, or dancing (including skating in a manner akin to dancing or ballet), and (ii) in which such music is the music written for or used in the original presentation as the work being sung, played, or danced to.

(8) “*Performance Credit*” shall mean the unit of measure of the results of the survey, being derived by multiplying uses or fractional uses by the applicable sampling and economic multipliers.

(B) Each feature performance is to be awarded one use credit, except as provided herein and in subsections (D), (E) and (H) hereof. Fractional use credit may be awarded to compositions performed as a theme, jingle or as background, cue or bridge music, or (for compositions other than a jingle) in conjunction with advertising, promotional and public service announcements and logos in accordance with Paragraph (A) (1) above, or performances of copyrighted arrangements of works in the public domain.

(1) ASCAP may promulgate rules limiting the credits awarded to feature performances of works which (i) do not comply with the tests set forth in Paragraph (4) below and (ii) are less than 45 seconds in length.

(2) ASCAP may make distinctions in the amount of credit awarded to various works for similar uses when used as themes, background, cue or bridge music, or (for compositions other than a jingle) in conjunction with advertising, promotional and public service announcements in accordance with Paragraph (A) (1) above, provided that such distinctions shall be based solely on the number of radio and television feature performance credits

received by the work prior to the fiscal survey year for which credit is to be awarded as provided in Paragraph (4) below. ASCAP may also make distinctions in the amount of credit awarded for various works used as themes on television programs provided that such distinctions shall be based on (i) the number of weeks the work is used on the program and (ii) as to network television programs, the time of day of such use.

(3)(a) Works which qualify under Paragraph (4) below when used as background, cue or bridge music may be awarded fractional use credit on a durational basis or qualifying work credit, whichever is greater. Non-qualifying works when used as background, cue or bridge music may be awarded fractional use credit on a durational basis (not to exceed 60% for three minutes).

(b) In the event ASCAP distributes revenues from television per program licensees on a program by program basis, ASCAP may award fractional use credit to non-qualifying works for such compensable uses on programs transmitted by television per program licensees on a durational basis (not to exceed 60% for three minutes).

(4) The distinctions referred to in Paragraph (2) above shall be based upon compliance with both of the following tests for maximum credit:

(a) A number of accumulated radio and television feature performance credits (not to exceed 20,000 credits since October 1, 1959, for a fully qualifying work), and

(b) a number of radio and television feature performance credits (not to exceed 5,000) in the five latest available preceding fiscal survey years, toward which there may be a limit of not more than 30% of such number of credits to be counted in any one year; provided, however, that when a work accumulates 150,000 radio and television feature performance credits it shall be deemed to be in compliance with this test.

(5) Until five years of records of feature performances are available, the number of feature performance credits required pursuant to subparagraph (b) of Paragraph (4) above shall be reduced proportionately to the number of years available. For a work whose first surveyed performance occurred within the five latest available preceding fiscal survey years, the requirement of said subparagraph (b) shall be satisfied when the work has met the requirements of subparagraph (a) of Paragraph (4) above and shall continue to be satisfied if in each subsequent year of such five years the work receives one-fifth the number of feature performance credits required by said subparagraph (b).

(C) The number of performance credits needed to meet any requirement

pursuant to Paragraph (4) above is premised on an annual total of approximately 25,000,000 performance credits recorded in the ASCAP survey; performance credits in years when the total number of performance credits recorded in the ASCAP survey was 20% greater or smaller than that number shall be adjusted proportionately.

(D) ASCAP may promulgate rules limiting the credit to be awarded (a) to multiple performance of the same work or aggregate performances of all works on a single program or during a period of programming or on a continuing series of the same program which is presented two or more times per week, or (b) to individual performances of a work in conjunction with an advertising or promotional announcement sponsored by the network or station on which it appears. ASCAP may make distinctions on the basis of the length of the performance or on whether it was vocal or a visual instrumental performance, or on whether the work is written or published by persons regularly associated with the program on which such performances are rendered.

(E) Multiple use credits may be awarded for performances of works which require four minutes or more for a single, complete rendition thereof, and such credit may be limited to certain works, e.g., those which in their original form were composed for a choral, symphonic or similar concert performance (including chamber music). ASCAP may also distribute to its members, for performances of their works in concert and symphony halls, amounts in excess of the license fees it receives from such licensees (e.g., five times said license fees).

(F) ASCAP may promulgate rules limiting the crediting of performances of works of a member on programs for which the music information is prepared by such member or by a person associated with such member and which, on the basis of available data, appears to be inaccurate and where video tapes or other audio-visual recordings are not available.

(G) ASCAP may promulgate rules providing for additional credit for works performed as themes on a television musical or variety program where the performance is rendered on-camera either vocally, instrumentally or by dancer(s) and constitutes a principal focus of audience attention.

(H) ASCAP may make reasonable distinctions in the amount of credit awarded for performances of works on radio and television programs on the basis of the following:

- (1) the time of day;
- (2) day of week;
- (3) holidays as opposed to other days.

VII. THE WEIGHTING FORMULA

In awarding credit for a performance appearing in the Society's survey, no distinction shall be made on the basis of the identity or use of the work performed, except as provided in this Weighting Formula.

(A) As used in this Weighting Formula:

(1) "*Theme*" shall mean a musical work used as an identifying signature of a radio or television personality or of all or part of a radio or television program or series of programs. A musical work (other than a jingle) used in conjunction with an advertising, promotional or public service announcement shall receive the credit proposed by the Society as explained in its Application for Amendment to the Consent Decree and Notice to Members in April 1994.

(2) "*Background Music*" shall mean mood, atmosphere or thematic music performed as background to some non-musical subject matter being presented on a radio or television program. A vocal or visual instrumental rendition which is a principal focus of audience attention shall not be regarded as background music regardless of the context in which performed.

(3) "*Jingle*" shall mean an advertising, promotional or public service announcement containing musical material (with or without lyrics), where (a) the musical material was originally written for advertising, promotional or public service announcement purposes or (b) the performance is of a musical work, originally written for other purposes, with the lyrics changed for advertising, promotional or public service announcement purposes with the permission of the ASCAP member or members in interest or (c) the performance is of a musical work, originally written for other purposes, which does not have at least one hundred and fifty feature performance credits recorded in the Society's radio and television surveys during the five preceding fiscal survey years.

(4) "*Cue Music*" shall mean music used on a radio or television program to introduce, but not to identify, a personality or event thereon. The term "cue music" includes, but is not limited to, introductions, "play-ons," and "play-offs."

(5) "*Bridge Music*" shall mean music used on a radio or television program as a connective link between segments or portions thereof.

(6)(a) "*Feature Performance*" shall mean any performance which is a principal focus of audience attention and which constitutes a musical subject matter on a radio or television program and is not performance as a theme, jingle, background, cue or bridge music, or in conjunction with an advertising, promotional or public service announcement or a logo. A visual instrumental or vocal performance shall be presumed to be a feature performance unless such performance is as a theme or a jingle or in conjunction with an advertising, promotional or public service announcement or logo or is not a principal focus of audience attention.

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(b) “*Visual Instrumental Performance*” shall mean a performance by a musician or musicians who are seen by the television viewing audience.

(c) “*Vocal Performance*” shall mean the performance of the lyrics of a composition or the on-camera humming or whistling of the music of a composition.

(d) “*Musical Subject Matter*” shall mean the presentation in a program of an activity (i) which normally involves the performance of music—such as singing, playing a musical instrument, or dancing (including skating in a manner akin to dancing or ballet), and (ii) in which such music is the music written for or used in the original presentation as the work being sung, played, or danced to.

(7) “*Qualifying Work*” shall mean a work meeting both of the criteria set forth in subparagraphs (a)(i) and (a)(ii) of Paragraph (C) of this Weighting Formula.

(8) “*Non-Qualifying Work*” shall mean a work not meeting the criteria set forth in Paragraph (C) of this Weighting Formula.

(9) “*Single Program*” shall mean a period of broadcasting which is presented by the same dominant personality, or is presented under substantially the same title, or is presented as a single show with separate segments. In the case of radio, if any such period of broadcasting is more than one hour in duration each one hour segment thereof shall be treated as a single program, and any remaining fraction of less than one hour shall be treated as a single program. In the case of television, such period of broadcasting shall be the actual length of the television program.

(10) “*Use Credit*” shall mean a full credit for a single performance.

(11) “*Otherwise Applicable Credit*” shall mean the use credit or percentage of a use credit otherwise provided for in this Weighting Formula for a particular type of use of a qualifying or non-qualifying work.

(B) *Credit for Feature Performances*

(1) Each feature performance of a work (as distinguished from performance as a theme, jingle or as background, cue or bridge music, or in conjunction with an advertising, promotional or public service announcement or logo) shall receive one use credit for the first performance and 10% of a use credit for each subsequent performance on a single program, provided that no work shall receive more than two use credits for a single program.

A feature performance on television of a non-qualifying work shall receive 50% of the otherwise applicable credit for the first performance if it is between 15 and 44 seconds in duration and 25% of the otherwise applicable credit for the first performance if it is 14 seconds or less in duration.

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Each subsequent performance on a single program shall receive 10% of the otherwise applicable credit, provided that no work shall receive more than two use credits for a single program.

(2) In the case of radio performances, if a single side of a 45 rpm recording, or a single band on a long playing record, tape or other similar device includes three or more works, the use credit allocated to all works on the side or the band shall bear the same relationship to eight (8) use credits that the duration of the side or band bears to a quarter hour.

(3) If (i) analysis indicates that there are inaccuracies in listing the compositions performed or describing the manner of the performance on reports received for certain programs, and (ii) such information is prepared by a member or by a person associated with a member, and (iii) the Society does not have and the user or the member are unable to furnish the Society with a film, video tape, or other audio-visual recording of the program, then it shall be presumed that the works of the member did not receive feature performances on the program.

(C) *Credit for Performances as a Theme, Background Music, Cue or Bridge Music, or Announcement*

(1) *Qualifying Works:*

(a) A work complying with both of the following tests shall be treated as a qualifying work for its performance as a theme, background music, cue or bridge music, or announcement:

(i) an accumulation of 20,000 radio and television feature performance credits since October 1, 1959;

(ii) an accumulation of 5,000 radio and television feature performance credits during the five latest available preceding fiscal survey years, toward which total not more than 1,500 credits shall be counted for any one of such survey years; provided, however, that when a work accumulates 150,000 radio and television feature performance credits it shall be deemed to be in compliance with this test.

(b) Until five years of records of feature performances are available the number of feature performance credits required pursuant to subparagraph (a) (ii) above shall be reduced proportionately to the number of years available. For a work whose first surveyed performance occurred within the five latest available preceding fiscal survey years, the requirement of said subparagraph (a)(ii) shall be satisfied when the work has met the requirements of subparagraph (a)(i) above and shall continue to be satisfied if in each subsequent year of such five years the work receives one-fifth the number of feature performance credits required by said subparagraph (a)(ii).

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(c) The number of performance credits needed to meet any requirements pursuant to subparagraph (a) above is premised on an annual total of approximately 25,000,000 performance credits recorded in the ASCAP survey; performance credits in years when the total number of performance credits recorded in the ASCAP survey was 20% greater or smaller than that number shall be adjusted proportionately.

(d) For works which in their original form were composed for a choral, symphonic or similar concert performance (including chamber music), the numbers of feature performance credits required by subparagraph (C)(1)(a) shall be reduced to 20% of the numbers of feature performance credits prescribed therein.

(e) When any work has been performed once as an opening or closing theme of a network television program which begins between the hours of 7:00 p.m. and 12:59 a.m. New York time it shall receive 60% of a use credit. When any such program is subsequently performed on local, public or cable television, the theme shall continue to receive 60% of a use credit. A work which qualifies both under this subparagraph and also any other subparagraphs of this Paragraph (C) (1) shall receive the credit provided in this subparagraph (e).

(2) Themes:

(a) When any qualifying work is performed as a theme, it shall receive only 60% of a use credit for all such performances within the first 60 minutes of any single program regardless of the number of actual such performances, and for all additional such performances during the remainder of the program it shall receive only an additional 6% of a use credit per hour regardless of the number of actual such performances.

(b) When any non-qualifying work is performed as a theme, it shall receive only 60% of a use credit for all such performances within the first 60 minutes of any single program regardless of the number of actual such performances, and for all additional such performances during the remainder of the program it shall receive only an additional 6% of a use credit per hour regardless of the number of actual such performances.

(3) Background, Cue and Bridge Music:

(a) When any qualifying work is performed as background, cue or bridge music, it shall receive the greater of (i) the credit for use of the work in a single program computed on a durational basis as provided in subparagraph (3)(b) below or (ii) 50% of a use credit for the first such performance on a single program, and only 5% of a use credit for each subsequent such performance on such program, provided, however, that in the event credit is computed as set forth in (ii) of the subparagraph (3) (a), no work shall receive more than one use credit for a single program.

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(b) Non-qualifying works written by the same writer or writers and published by the same publisher or publishers performed as background, cue or bridge music on each program shall receive, for each three minutes duration in the aggregate for that program, 60% of a use credit; multiples or fractions of three minutes shall be computed on a per second basis pro rata to the 60% use credit weight for three minutes; provided, however, that in no event shall such performance receive less than 1% of a use credit.

(c) To determine use credits for performances in this classification where the time of actual performance cannot be established from the information available to the Society, 40% of the net program time will be considered as containing background, cue or bridge music and the computation of 60%, will be based on such computed time. Where condensed versions of a program are presented and the actual music performed on this condensed version is unknown, the 40% computation will be made on the net program time and applied pro rata to all of the background, cue or bridge music in the original program. Where it is determined that the amount of music on particular types of programs deviates more than 20% from the 40% computation (e.g., so that less than 32% of the net program time contains background, cue and bridge music) the percentage applicable to these types of programs will be determined through periodic samples of the amount of program time on these types of programs containing background, cue and bridge music. Where the time is not given on the program or on a cue sheet available to the Society, in determining the use credit for each work the background, cue and bridge time determined as above will be divided among uses on a pro rata basis. These samples also shall be used to determine the average duration of identified compositions when information on duration is not readily available to the Society.

(4) Advertising, Promotional and Public Service Announcements, Logos and Jingles:

(a) Performance of any qualifying work in conjunction with an advertising or public service announcement (other than a jingle), shall receive only 12% of a use credit for all such performances within the first 60 minutes of any single program regardless of the number of actual such performances, and for all additional such performances during the remainder of the program, shall receive only an additional 10% of 12% of a use credit per hour regardless of the number of actual such performances. Performances of any non-qualifying work in conjunction with any advertising or public service announcement (other than a jingle), shall receive only 5% of a use credit for all such performances within the first 60 minutes of any single program regardless of the number of actual such performances, and for all additional such performances during the

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remainder of the program, shall receive only 10% of 5% of a used credit per hour regardless of the number of actual such performances.

(b) Performance of any qualifying work in conjunction with a promotional announcement (other than a jingle), sponsored by the network or station on which it appears, shall receive only 3.5% of a use credit for all such performances within the first 60 minutes of any single program regardless of the number of actual such performances, and for all additional such performances during the remainder of the program, shall receive only an additional 10% of 3.5% of a use credit per hour regardless of the number of actual such performances. Performances of any work as a logo and performances of any non-qualifying work in conjunction with a promotional announcement shall be credited in the same fashion as a jingle

(c) When any work is performed as a jingle it shall receive only 3% of a use credit for all such performances within the first 60 minutes of any single program regardless of the number of actual such performances, and for all additional such performances during the remainder of the program it shall receive only an additional 10% of 3% of a use credit per hour regardless of the number of actual such performances.

(5) *General Limitation:* Anything to the contrary notwithstanding; two or more works performed in an advertising, promotional or public service announcement shall receive in the aggregate the use credit which would have been allocated to the work entitled to the greatest use credit if only one work had been performed. The use credit for each such work shall be reduced pro rate.

(D) *Time-of-Day Factor for Television Programs*

(1) Performances of works on public television programs shall be credited as follows:

- (i) if the program begins between 1:00 a.m. and 6:59 a.m., 25% of the otherwise applicable credit;
- (ii) if the program begins between 7:00 a.m. and 12:59 a.m., 100% of the otherwise applicable credit;

(2) Performances of works on all other television programs shall be credited as follows:

- (i) if the program begins between 1:00 a.m. and 6:59 a.m., 25% of the otherwise applicable credit;
- (ii) if the program begins between 7:00 a.m. and 12:59 p.m., 50% of the otherwise applicable credit;
- (iii) if the program begins between 1:00 p.m. and 6:59 p.m., 75% of the otherwise applicable credit;

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(iv) if the program begins between 7:00 p.m. and 12:59 a.m., 100% of the otherwise applicable credit.

* * *

For a program which begins in one time period, as defined above, and extends into another time period, the applicable credit for all performances on that program shall be determined as follows:

When more than half the program is in one time period, that time period shall govern; when the program is divided equally between time periods, the time period having the higher applicable credit shall govern. However, performances of works on any program on a commercial broadcast television network that begins between 7:00 p.m. and 12:59 a.m. shall receive 100% of the otherwise applicable credit, even if the program extends into another time period.

For purposes of this rule, the time a network television program begins shall be New York broadcast time, except that if a network furnishes more than one program to its affiliates at the same time, such as different football games to different parts of the network, the times such programs begin shall be the local times at the places the programs originate.

(E) *Serious Works Four Minutes or Longer in Duration*

Works which require four minutes or more for a single, complete rendition thereof, and which in their original form were composed for a choral, symphonic, or similar concert performance (including chamber music), shall receive credit on the following basis when performed on radio or television for the respective designated periods if time:

Minutes of Actual Performance	The Otherwise Applicable Credit Is Multiplied by:
4:00 to 5:30	2
5:31 to 10:30	6
10:31 to 15:30	12
15:31 to 20:30	20
20:31 to 25:30	30
25:31 to 30:30	40
30:31 to 35:30	50
35:31 to 40:30	60
40:31 to 45:30	70
45:31 to 50:30	80
50:31 to 55:30	90
55:31 to 60:30	100
Each additional 5 minutes or part thereof	10

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(F) *Concert and Symphony Performances*

The license fees which the Society receives from concert and symphony halls shall be multiplied by four in determining credit to be awarded for performances of works in concert and symphony halls. The Society shall reduce the product of the multiplication by the percentage of the Society's expenses of operation applied to domestic revenue. For performances in concert and symphony halls, points shall be awarded as follows:

<u>POINTS AWARD</u>						
<u>MINUTES</u>						
Up	6	11	16	21	31	46
to	to	to	to	to	to	to
5	10	15	20	30	45	60

A) ENTERTAINMENT MUSIC—i.e.
Light or Standard Instrumental
and Choral Music
ALL CATEGORIES

1	2	3	4	5	6	7
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B) SERIOUS MUSIC IN THE ORIGINAL FORM

a. Works for 1 or 2 instruments with or without voice	2	4	6	8	10	12	14
b. Works for 3 to 9 instruments with or without voice	3	6	9	12	15	20	25
c. Works for small orchestra with or without voice	4	9	18	24	30	40	50
d. Works for full orchestra with or without voice	8	18	36	48	60	80	100

For works in excess of 60 minutes, pro rate on the basis of the 60 minute points. For purposes of Category B) on the chart above, vocal parts shall be deemed to be instruments. The percentage of credit for arrangements of works in the public domain shall be determined in accordance with Paragraph (G).

(G) *Works Utilizing Public Domain Material*

(1) If a work contains public domain text and original music, it may receive from 50% to 100% of the otherwise applicable credit depending on the extent and treatment of the public domain text within the context of the entire work.

(2) Except as hereinafter specifically provided, any arrangement of a work in the public domain which is separately published or separately copyrighted in the United States shall receive 10% of the otherwise applicable credit.

(3) If an arrangement of work otherwise in the public domain is included in a copyrighted collection and does not qualify for the 10% credit under the preceding paragraph it shall receive 2% of the otherwise applicable credit.

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(4) If a copyrighted arrangement of a work otherwise in the public domain contains text, it shall be deemed a vocal arrangement and may receive up to 100% of the otherwise applicable credit, depending on the extent to which it embodies changes in the underlying composition as follows:

- (a) new lyrics up to 50%
- (b) changes in the music up to 50%; in addition to any credit pursuant to subparagraph (4)(a).

(5) If a copyrighted arrangement of a work otherwise in the public domain is primarily an instrumental work, it may receive up to 100% of the otherwise applicable credit, depending upon the extent to which it embodies changes in the music as follows:

- (a) a transference from one medium to another, up to 35%;
- (b) a development of a work which exhibits creative treatment and contains original musical characteristics and is identifiable as a set piece apart from the source material, up to 100%.

(6) All weightings made pursuant to this paragraph shall be determined by the Society and may be reviewed by the Special Classification Committee for Public Domain Arrangements at the request of the member in interest.

(H) Limitation on Amounts Distributable Pursuant to Paragraph (F)

Commencing with survey year October 1995 through September 1996, and for subsequent years, if the distributable amount pursuant to Paragraph (F) above shall exceed 3.6% of the total quarterly domestic distributions for that survey year, such distributable amount shall be reduced pro rate and limited to said 3.6%.

(I) Performances on Interactive Internet Websites

For performances on interactive internet websites, distributions shall be based on points, which shall be computed by multiplying: (i) the ratio of the performances of each individual surveyed composition to the total performances of all surveyed compositions in a sampling cell, by (ii) the ratio of the distributable revenue from the interactive internet websites in a sampling cell, net of the Society's expenses of operations, to the credit value for that fiscal survey year. No fractional points shall be awarded.

Weighting Formula

Procedure and Specific Situations in Application of Weighting Formula Provisions

The Board of Directors has considered in detail the procedure for implementing the Weighting Formula provisions and the way in which they will be applied to specific situations.

1. Weighting Formula Provisions—Procedure

The Society has for some time been reviewing on a regular basis information received concerning performances on network and local television programs. This review is being conducted by means of audio and visual examination of programs. The Society uses video tape recording equipment in connection with this review.

Particular attention will be given to programs which, considering the nature of the program, generate an unusually large number of performance credits. Such programs will be checked by listening and viewing, or both, and comparing the results with the music information appearing on the program logs or cue sheets received by the Society.

2. Weighting Formula Provisions—Specific Situations as Guides in Application of Formula

The Survey and Distribution Committee has prepared, and the Board of Directors has approved, a series of illustrations of the way in which the formula provisions would be applied to specific situations.

A. The following are the examples of performances other than as a theme, or a jingle, which would be credited as feature performances under the Weighting Formula:

(1) A vocal or visual instrumental performance of a composition which is announced or to which the attention of the audience is otherwise specifically directed by a participant on the program.

(2) A performance as part of a song or dance act which constitutes the principal activity on the program at the time it is rendered.

(3) A performance on an audience participation program where the activity taking place is the identification by the participants on the program of the composition being performed.

(4) Announced instrumentals at public spectacles such as football games.*

*NOTE: a visual instrumental performance at a football game by a band which was actually viewed and heard by the television audience will be credited as a feature performance so long as the camera was focused on the band deliberately—that is unless the band was visible for only a fleeting moment while for example the camera was focused on someone who just happened to be passing by the band or while the camera was panning.

Weighting Formula

B. The following are examples of performances which would not be credited as feature performances under the Weighting Formula:

(1) A performance where the orchestra or instrumentalist appears visually for a brief period while a participant on a program, such as a quiz game, panel, audience participation or similar program, is passing by or while the camera is panning.

(2) A vocal or visual instrumental performance to introduce or accompany the following or quiz games, panel, audience participation or similar programs:

(a) the description or presentation of prizes;

(b) the appearance or departure of participants; or

(c) the change of scene or subject.

(3) Unannounced instrumental performances during public spectacles such as football games. (Performances at football games other than those indicated to have occurred during halftime periods will be presumed to be background music.)*

(4) A vocal or visual instrumental performances used as a bridge to or from a commercial announcement or in a similar manner as a connective link.

(5) A vocal or visual instrumental performance used as a “play-on” or “play-off.”

(6) Non-visual instrumental performance as accompaniment to magicians or clowns, or acrobatic or animal acts.

(7) Humming or whistling off camera in a television program shall not be regarded as a feature performance.

(8) A performance with a film clip, newsreel, or documentary of dancers, skaters, instrumentalists or singers is not credited as a feature performance unless the music heard by the viewer is the music written for or used in the original presentation as the music being danced to, skated to, played, or sung by the performers being shown on the television screen.

(9) So-called “Mickey Mousing” shall not receive feature credit. The term “Mickey Mousing” refers to scoring on a film or similar program in which the music is very closely synchronized with movements, animation, or other activity on the program. The term does not include an activity which constitutes a musical subject matter.

*NOTE: A visual instrumental performance at a football game by a band which was actually viewed and heard by the television audience will be credited as a feature performance so long as the camera was focused on the band deliberately—that is unless the band was visible for only a fleeting moment while for example the camera was focused on someone who just happened to be passing by the band or while the camera was panning.

Weighting Formula

(10) A performance in which the focus of audience attention is exercise movements (as, for example, in an exercise program) or a representation of exercise movements (as, for example, in a comic or dramatic scene) executed in time to music, whether referred to as “dancercise,” “aerobic dancing,” or otherwise.

C. The following are examples of performances which will be considered themes under Paragraph (A) (1) of the Weighting Formula:

(1) Any work regularly used as an identifying signature of all or part of a program or a personality even though more than one work is so used.

(2) Any work regularly used on a program to identify all or part of a program or a segment thereof, or a personality, even though the work is not used on every program.

(3) Any work regularly used on a program and which has either substantially the same lyrics or music and which introduces, illustrates, or depicts a continuing story, subject matter, segment, or set, or is itself a scene or segment.

D. The following is an example of feature performances which would receive reduced credit under Paragraph (B) (2) of the Weighting Formula:

Three works with a running time of 5 minutes occupying one side of a 45 rpm or one cut of a 33-1/3 rpm record will share 2.67 use credits, that is 1/3 of the eight (8) maximum use credits per quarter hour, because the duration of the record or cut is 1/3 of the quarter hour.

E. The following are examples of arranging materials which receive no credit: Production numbers of the kind often seen in television musical or variety programs and football halftime shows frequently include arranging materials, such as introductions, tag endings, interludes, transitional material or segues, counter melodies or improvisations based on the chord structure of the copyrighted principal work or works being featured. Such arranging materials will not receive any performance credit. (The only arrangements entitled to credit are copyrighted arrangements of works in the public domain under Paragraph (G) of the Weighting Formula.)

F. Performances used at the opening and closing of made-for-TV movies, movies originally made for theatrical release and “mini-series” will be credited as background unless they qualify for feature credit under Paragraph (A) (6) of the Weighting Formula.

The foregoing illustrations are designed to serve as guides to the application of the Weighting Formula provisions. They are not, it must be emphasized, an all-inclusive listing of all possible situations, and they will be supplemented from time to time as additional illustrations are felt to be appropriate.

*Weighting Formula**3. Weighting Formula Provisions—Television*

All generic references to “television” in the Weighting Formula shall apply to network, local, public and cable television.

**Examine Your Statements—They Are
Presumed to Be Correct Unless Objections
Are Raised Within Nine Months**

ASCAP mails annual statements to its publisher members with the first publisher distribution of the calendar year (currently in March), to its writer members with the second writer distribution of the calendar year (currently in April), and four foreign statements annually to writer and publisher members (currently in February, May, August, November). Any question about the crediting of any performance on such statement, any objection to such crediting, or any question about the omission of a work from such statement must be raised within nine months of receipt of the statement or it will be presumed to be correct. ASCAP will make any appropriate adjustments only as far back as the period covered by the statement, but no further.



A S C A P