



## MERLIN MEMBERSHIP APPLICATION

### Introduction

#### **What is Merlin?**

Merlin is licensing entity owned on a not-for-profit basis, which provides small, independent music companies with access to otherwise unavailable licensing arrangements, and with an advocacy voice to protect and exploit their copyrights in new media, worldwide.

#### **Why Does Merlin Exist?**

Merlin exists because the vast majority of independent music companies do not have the resources to enforce their own copyrights, or to capture the attention of potential music users and gain access to licensing opportunities.

Merlin is focused wholly on representing independent music companies in licensing agreements, and in stopping copyright infringement on their behalf.

#### **Who Can Join and What Does it Cost?**

Membership is free and open to all companies controlling master rights that fulfill the Membership Criteria.

#### **Membership Criteria**

The Membership Criteria shall be as set by Merlin's supervisory board from time to time. The current Membership Criteria are that membership is open to any company owning or controlling master recording rights, with an annual share of the global market for recorded music of less than 5% except any company which is owned in whole or in part, or controlled, by either a "non qualifying company" or a company which is a member of a "non qualifying group of companies" (the "ownership criteria").\*

In addition, Merlin reserves the right to refuse membership to any company whose membership the supervisory board of Merlin reasonably believes would be incompatible with the achievement of Merlin's objectives.

The supervisory board of Merlin may however, in its discretion, depending on circumstances (and with due regard to legal advice in particular as to competition law matters) accept an application for membership from a company which does not fulfill the ownership criteria.

Prospective members who have licensed or assigned all, or parts of, their digital master rights to distributors, aggregators or other agencies can join via these companies. If your label is in this situation, you should discuss this decision with your distributor.

There is no penalty for withdrawing from Merlin.

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\* For the purposes of the Membership Criteria described above:

the term "**company**" includes any company, corporation, partnership, sole trader or other business;

a "**non qualifying company**" is any company with a 5% or more annual share of the global recorded music market;

a "**non qualifying group of companies**" is any group of companies (i.e. a company and all companies either controlled or 50% or more owned by such company or managed on a unified basis with such company) whose aggregate annual share of the global record music market is 5% or more;

a company "**controls**" another where it either holds or controls a majority of the voting rights in a company, has the right to appoint or remove a director of a company or has the right to exercise a dominant influence over a company;

additionally, a company controls another company if it owns or controls 50% or more of a company which controls such company; and

a company (the "owner") is deemed to "**own**" shares where shares are held by a person acting on behalf of the owner or are owned by a company 50% or more owned by the owner.

## **What Will Merlin Do?**

Merlin will provide blanket licences for independent content where individual licensing agreements have proven to be inherently impracticable, and where existing aggregators, distributors, and collecting societies are not able to provide equivalent services. Licences will be tailored to the needs of licensees, taking into consideration the intensity, means, and frequency of content use, while still protecting the interests of Merlin's members. To enable Merlin to do this, Members will grant Merlin the right to license their digital and new media content. Members will remain free to seek out competitive deals on their own, as Merlin's agreement is a non-exclusive one.

Merlin will also seek to enforce and remedy copyright infringement on behalf of members, who on their own do not have the resources to do so effectively.

Merlin's licenses and copyright enforcement services offer tremendous opportunity and value because the market is such that, otherwise, those eligible for membership would not have access to licensing opportunities, or be able to protect their copyrights, because they do not have the resources.

Merlin's operations will be transparent, to the benefit of both licensees and Merlin's members.

## **Who Controls Merlin?**

Merlin is owned and controlled by a not for profit foundation, supervised by an elected board representing the independent label community.

There are Five Directors from each of the following three zones – North America – Europe – Rest of the World, plus the sitting WIN President. The full list of board members is on our website.

Merlin is run on a day to day basis by its CEO, Charles Caldas and his staff.

## **How is Merlin Funded?**

Merlin will deduct an administration fee from money it collects on behalf of its members. The fee will be variable and will be **calculated based upon the costs of negotiating and administering deals and legal actions**. As Merlin is owned by a not for profit foundation, we will **distribute 100% of all funds in excess of actual and budgeted operational, tax, legal and service costs** back to our members.

**For general information on Merlin, please visit our website at [www.merlinnetwork.org](http://www.merlinnetwork.org)**

## NOTES ON THE MERLIN MEMBERSHIP AGREEMENT

Your membership agreement and an application form are included in these documents.

In order to join Merlin these must be completed, signed and returned to Merlin via fax, mail, PDF scans via email or through the electronic application process on our website.

If you are not using the electronic application process, please fill in by hand at the head of the agreement, details of your company name, address, the authorised representative signing the agreement and your email address for notices. The authorised representative signing the agreement should initial each page of the agreement and sign on the last page. Please then leave the document undated and return to Merlin.

If you have any questions regarding this application that are not covered by the guidance note, please contact Merlin's helpdesk at [info@merlinnetwork.org](mailto:info@merlinnetwork.org)

### **GUIDANCE NOTE – MEMBERSHIP AGREEMENT**

#### What does the Membership Agreement do?

The Merlin membership agreement grants Merlin a non-exclusive license regarding representation of certain of your rights in master recordings. You will however always have the ability to opt out of any deals, litigation or settlements that Merlin may undertake if you do not wish to participate in these.

#### What rights am I authorising Merlin to represent?

The membership agreement covers all "non-physical" rights. This includes digital rights and broadcasting rights BUT the agreement is non-exclusive and only applies to rights you own or control and which have not been licensed or assigned elsewhere.

***Therefore, the agreement will not interfere with any existing or future arrangements you decide to enter into - whether that is an existing agreement with a public performance collection society or an agreement you decide to enter into directly with a digital download service.***

#### Will Merlin do all of my digital deals?

No, Merlin will not interfere in business that its members choose to do, and members remain free to negotiate their own deals, and opt out of any Merlin deals.

Merlin will only take action in instances where the supervisory board finds that;

1. Members do not have access, individually, to licensing deals, due to market circumstances;
2. Member copyrights are not adequately protected and are being infringed; and
3. existing services do not already exist that serve the needs of Members.

#### Do I have to participate in every negotiation that Merlin makes?

You will have the opportunity to opt out of any action or agreement Merlin intends to pursue.

#### How will Merlin distribute funds and royalties which it negotiates?

Merlin will distribute 100% of the income it brings in subject only to deduction of essential costs, which the supervisory board representing the labels' interests will approve.

The supervisory board will ensure that income is distributed as equitably and as quickly as possible. Where possible, income will be collected and distributed on a track by track basis so that it is directly identifiable to particular recordings/rights owners.

#### What if I have a complaint about a distribution of funds?

An appeals panel will be instituted to deal with any complaints by members that income has not been properly distributed in accordance with the supervisory board's directions.