
Standard Contract
Entertainment Videos 1998
Denmark



Nordisk Copyright Bureau

This Contract is made this day between

Nordisk Copyright Bureau
Hammerichsgade 14
DK-1611 Copenhagen V

hereinafter called “**NCB**”
of the one part

and

hereinafter called the “**Distributor**”, which shall mean the company or person who is responsible in relation to NCB for the accounting of NCB royalties for entertainment videos which are recorded, manufactured and distributed according to this Contract,

of the other part.

CONTENTS

CONTENTS	2
1 DEFINITIONS	4
1.1 Repertoire of NCB.....	4
1.2 Entertainment Videos.....	4
2 NCB LICENCE.....	5
2.1 Scope of the Licence	5
2.2 Additional Licences.....	5
2.3 Bans.....	6
3 MORAL RIGHTS & CREDITS	7
3.1 Respect for the Work.....	7
3.2 Information on Works and Authors.....	7
4 REPORTING PROCEDURES.....	8
4.1 Registration of Releases	8
4.2 Reporting of Sales/Distribution.....	8
5 NCB ROYALTIES.....	10
5.1 Royalties Payable	10
5.2 Calculation of Royalties – Mechanical and Synchronization.....	10
5.3 Free Issues for Sales Promotion	11
5.4 Royalty Invoice	11
6 FINANCIAL PROVISIONS.....	12
6.1 Monthly Advances	12
6.2 Guarantee.....	12
6.3 Interest, Additional Fees and Payment of Invoice.....	12
6.4 Returns	13
7 AUDIT	14
7.1 Royalty Audit	14
7.2 Confidential Information.....	14
8 TERM OF THE CONTRACT	15
8.1 Notice of Termination	15
8.2 Commencement Date	15

ANNEX 1 • DEFINITIONS – PRODUCTION CATEGORIES	16
ANNEX 2 • NCB ROYALTIES (CF. CLAUSES 5.2.4 + 5.2.8)	17
ANNEX 3 • MINIMUM/MAXIMUM	18
Minimum	18
Maximum	18
ANNEX 4 • INTEREST & ADDITIONAL FEES	19
Valid as at 1 January 1998	19

1 DEFINITIONS

1.1 Repertoire of NCB

- 1.1.1 The repertoire of NCB comprises the copyright works for which the management and administration of the mechanical rights has been or will be entrusted to NCB by virtue of membership agreements, reciprocal agreements with sister societies, including commissioned music composed by NCB members.

NCB's repertoire also includes lyrics and words without music, e.g. monologues, provided that the author by special agreement has entrusted such rights to NCB.

- 1.1.2 As for entertainment videos produced in countries other than the USA and Great Britain it shall be implied that the Distributor has *not* acquired the mechanical rights in the relevant works from the authors. It rests with the Distributor to prove that he has acquired the rights in the works in question.
- 1.1.3 As for entertainment videos produced in the USA and Great Britain it shall be implied that the Distributor has acquired the above rights. It rests with NCB to prove that the rights in question are administered by NCB

1.2 Entertainment Videos

- 1.2.1 This Contract allows the Distributor to make use of NCB's repertoire in entertainment videos recorded onto VHS cassettes. Entertainment videos are defined in Annex 1 which forms an integrated part of this Contract.
- 1.2.2 Any exploitation of NCB's repertoire on other format than VHS cassette is not covered by this Contract until special agreement has been made between the parties. If so agreed, FDV (the Association of Danish Video Distributors) and NCB may from time to time extend or reduce the list of formats covered by this Contract.

2 NCB LICENCE

2.1 Scope of the Licence

2.1.1 The licence covered by this Contract shall – in addition to what is set out in clause 1.1 – be granted only on condition that the video cassettes or video masters used for duplication and/or distribution have been legally produced and on condition that the Distributor has acquired the right from the producer to duplication and distribution. At NCB's request the Distributor shall provide evidence that such conditions have been met. Failure on NCB's part to put forward such a request does not exempt the Distributor from his responsibility in this respect.

2.1.2 NCB grants to the Distributor a non-exclusive licence to:

- ◆ make recordings of NCB repertoire works
- ◆ manufacture videos on the basis of such recordings as defined in clause 1.2
- ◆ put the said copies in circulation with a view to their distribution free of charge or by way of sale for private use, however, not by way of rental or lending which will require separate permission by NCB

This licence shall also include copies made by the Distributor on the basis of third party's recordings, provided that the production or importation of such recordings have been approved by NCB.

2.1.3 The licence shall cover sales only in the country where the Distributor has his registered office, unless otherwise agreed in writing with NCB.

2.1.4 The licence shall not be transferred to any third party. Masters shall not be passed on to any third party without NCB's approval.

2.1.5 NCB's licence is subject to any additional licences being granted as mentioned below.

2.1.6 NCB's licence, as defined in clause 2.1.1, shall apply only as long as this Contract between the Distributor and NCB continues to have effect. Upon termination of the Contract, NCB's licence shall no longer apply, which means that any recording or manufacture of entertainment videos containing NCB repertoire shall be subject to separate permission from NCB and payment of NCB royalties in advance.

2.2 Additional Licences

2.2.1 The licence does not include public performance.

2.2.2 An additional licence must be applied for through NCB for the combination of music and picture (synchronization). The distribution of entertainment videos for private use is always subject to the payment of a synchronization fee, provided that such fee for private use has not been paid previously. It rests with the Distributor to prove that the production has previously been cleared for private use.

If the music/words are used in a political, religious, pornographic or commercial context, an additional licence and a special price must be negotiated through NCB.

2.2.3 In the below instances the Distributor shall apply for additional licences from the copyright owners (= the composer/lyricist or the relevant music publisher) before any production can be made.

- ◆ graphic or visual reproduction of sheet music or words
- ◆ adaptation, sampling or fragmentary reproduction of music/words
- ◆ music that has never been released on CD, record, tape or similar media (first recording)
- ◆ new or translated lyrics for existing music
- ◆ new music for existing lyrics
- ◆ re-recording/dubbing from existing recordings (additional licences must be obtained from the record/production company and the relevant performing artists)

2.2.4 At NCB's request the Distributor shall provide evidence that the above licences have been obtained.

2.3 Bans

2.3.1 NCB reserves the right to designate specific works of its repertoire on which a general ban has been imposed in relation to the exploitation of such works in entertainment videos.

2.3.2 If the Distributor fails to comply with the provisions of this Contract, NCB shall be entitled to apply sanctions. Especially if the Distributor fails to comply with the provisions set out in clauses 2 and 3, NCB shall be entitled to demand that all distribution of the products in question be stopped and all copies already distributed be recalled from the stores.

3 MORAL RIGHTS & CREDITS

3.1 Respect for the Work

- 3.1.1. Any modifications to a work which the Distributor considers necessary to apply in order to satisfy the requirements of recording shall not have the effect of altering the character of the work, and NCB expressly reserves the moral rights of the author. The work shall not be put into public circulation in any way or any context which may be prejudicial to the honour or the literary and artistic reputation of the author.
- 3.1.2 In any such event it is important that the Distributor has obtained all required additional licences – cf. clause 2.2.

3.2 Information on Works and Authors

- 3.2.1 The Distributor undertakes to include the below information on the video inlay or cover:

- ◆ composers, lyricists (arrangers and publishers, if any) work by work
- ◆ title of each work recorded
- ◆ the NCB logo (the NCB logo in camera-ready form is available from NCB)
- ◆ the following wording:

“This video cassette shall only be sold to private persons. The cassette is for private and domestic use only. Public exhibition including cable television etc. prohibited. Renting, lending or duplication of the cassette prohibited.”

4 REPORTING PROCEDURES

4.1 Registration of Releases

- 4.1.1 The Distributor undertakes to notify to NCB the labels, series or names – below referred to as video labels – under which he releases his products. This Contract shall cover only the video labels notified by the Distributor to NCB.

NCB accepts only one distributor in Denmark as being responsible for the payment of royalties for any given video label.

- 4.1.2 In no circumstances shall entertainment videos of different contents bear identical catalogue numbers (identification numbers) if they are released on the same video label.

- 4.1.3 The Distributor undertakes to register with NCB – not later than on the day the video is released – complete information on the title of the production and its contents, including titles of works recorded, copyright owners and the playing time in seconds of each work.

The registration must be made by submitting NCB's Release Notice for AV productions together with a copy of the video in question.

The registration shall be in accordance with the procedure drawn up by NCB.

- 4.1.4 The Distributor shall regularly submit to NCB a copy of all his newsletters, catalogues, price lists and other printed matter on all his products.

- 4.1.5 If the Distributor imports videos for which no synchronization and mechanical fees have been paid to NCB's sister society in the country of production or the exporting country, the Distributor shall submit to NCB the information set out in clause 4.1.3 and the Distributor undertakes to pay synchronization and mechanical fees in accordance with clause 5.2.

If the Distributor imports videos for which synchronization and mechanical fees have been paid to NCB's sister society in the country of production or the exporting country, the Distributor shall inform NCB of the title of the production and the title under which it is released on video, and at NCB's request he undertakes to procure written proof of payment of synchronization and mechanical fees.

4.2 Reporting of Sales/Distribution

- 4.2.1 Twice a year – in July and January – the Distributor undertakes to report the number of entertainment videos which have left the Distributor's warehouse during the last six months.

The reporting shall be made on a list called "Sales Report", which is prepared by NCB and sent to the Distributor. The Sales Report contains a computer print-out of all the releases registered by the Distributor with NCB. The Sales Report includes detailed instructions as to how it should be filled in.

The reporting may also be made electronically according to NCB's specifications.

4.2.2 The Distributor undertakes to return the Sales Report to NCB within one month after receipt, giving all details against each video release as to

- ◆ quantities shipped
- ◆ countries of destination
- ◆ highest official list price published to dealer for each country concerned – referred to as the PPD (Published Price to Dealer)

5 NCB ROYALTIES

5.1 Royalties Payable

- 5.1.1 Royalties shall be payable at the moment when the Distributor has made a sound recording of NCB's repertoire and on basis hereof made copies of the recording with a view to their distribution for private use.
- 5.1.2 Provided that the Distributor fulfils his obligations as set out in this Contract, NCB shall not claim settlement of royalties until after the end of the accounting period during which the copies have left the Distributor's warehouse.

5.2 Calculation of Royalties – Mechanical and Synchronisation

- 5.2.1 For each video cassette reproducing one or more works of NCB's repertoire the Distributor shall pay mechanical royalties as set out below.
- 5.2.2 Mechanical royalties are calculated on the basis of the PPD (Published Price to Dealer) of the production = the Distributor's official list price to retail dealers, exclusive of VAT. Discounts whatsoever do not affect the PPD.
- 5.2.3 If the Distributor only sells direct to consumers, the calculation is based on the RRP (Recommended Retail Price) = the Distributor's official price to consumers, exclusive of VAT.
- 5.2.4 Mechanical royalties will be calculated as follows – cf. Annex 2:

9.009% of PPD calculated as the playing time of NCB repertoire in proportion to the total playing time of the entertainment programme of the video x number of copies
alternatively 7.4% of RRP calculated as the playing time of NCB repertoire in proportion to the total playing time of the entertainment programme of the video x number of copies

“Entertainment programme” shall mean the primary entertainment part of the video according to the definition set out in this Contract, whereby e.g. trailers are excluded.

The maximum duration of the entertainment programme shall be 120 minutes.

- 5.2.5 Applicable minimum/maximum rates must be considered when calculating mechanical royalties. These rates are indicated in Annex 3, and subject to agreement between FDV (the Association of Danish Video Distributors) and NCB they may be changed every six months.
- 5.2.6 The base price for the calculation of mechanical royalties shall be the highest price which at the time in question will be invoiced for one copy of the said entertainment video. Temporary price reductions (i.e. price reductions of a duration less than 4 weeks) shall not be taken into account.

- 5.2.7 Club sales shall be based on the highest PPD at the time of delivery no matter what the final price turns out to be.
- 5.2.8 According to 2.2.2 private use is subject to the payment of a synchronization fee in addition to the mechanical fee. The synchronization fee is explained in Annex 2 and it may at any time without notice be changed by NCB. Synchronization fee for private use must be paid by the Distributor unless he can prove – as set out in clause 2.2.2. – that the production has previously been cleared for private use.

5.3 Free Issues for Sales Promotion

- 5.3.1 For the Distributor's national and international sales promotion and for submission to critics, up to 250 copies may be exempt from NCB royalties.
- 5.3.2 It is a condition that free issues are handed out free of charge and marked "Promotion", "Free Issue" or "Not For Sale". This notice on each video cassette must be non-erasable.
- 5.3.3 For audit purposes the number of free issues handed out must be indicated in the Distributor's Sales Report. At NCB's request the Distributor shall submit a copy free of charge to NCB.

5.4 Royalty Invoice

- 5.4.1 After the end of each accounting period (calendar half year) the Distributor shall receive an invoice covering NCB royalties payable:
- in October invoice covering 1 January – 30 June (1st half year)
in April invoice covering 1 July – 31 December (2nd half year)
- 5.4.2 The invoice is prepared on the basis of information given by the Distributor in his Sales Report for the half year in question – cf. clause 4.2.

6 FINANCIAL PROVISIONS

6.1 Monthly Advances

- 6.1.1 As royalty invoicing is made only twice a year, the Distributor undertakes to pay monthly advances to NCB. The amount shall equal NCB royalties payable for one month, based on the information supplied by the Distributor as to his NCB relevant sales forecast – however, the minimum amount per month shall be DKK 1,000.00.
- 6.1.2 NCB may adjust the monthly advances twice a year. This is done after the invoicing and based on NCB royalties payable during the two preceding accounting periods.
- 6.1.3 Any difference between advances paid and royalties due after a given accounting period, will bear interest at the rate indicated in Annex 4.

6.2 Guarantee

- 6.2.1 As a financial security for the unaccounted entertainment videos in stock, the Distributor shall provide a guarantee. The amount of the guarantee will be estimated by NCB for any new Distributor and shall equal royalties payable for three months – however, with a minimum of DKK 5,000.00.
- 6.2.2 The guarantee must be either a banker's guarantee (the form and wording of the guarantee in accordance with directions given by NCB) or a cash deposit.
- 6.2.3 Based on an average of NCB's royalty invoices to the Distributor during the preceding two accounting periods, NCB may adjust the guaranteed amount once a year in the month of January.

6.3 Interest, Additional Fees and Payment of Invoice

- 6.3.1 NCB shall be entitled to charge interest and additional fees according to NCB's applicable rates – cf. Annex 4.
- 6.3.2 All invoices issued by NCB to the Distributor shall be payable within 14 days from invoice date.
- 6.3.3 The interest rate applicable to late payment, differences between advance payments and royalty payable and any other interest charge according to this Contract appears from Annex 4.
- 6.3.4 Any reminder sent by NCB shall be charged the Distributor at the current fees. This applies to any reminder whether it is due to failure to report releases/sales in time or non-payment of invoices. Any collection charges due to non-payment by the Distributor shall be debited to the Distributor according to current rates.

6.4 Returns

- 6.4.1 No NCB royalties shall be payable if within the same accounting period a video cassette is returned to warehouse and entered as a return in the Distributor's accounting systems. It is a condition that the video cassette is re-entered in the books at full price.
- 6.4.2 The total number set off as returns during one accounting period shall never exceed the total outgoings of the same video production during the same accounting period. Any excess of returns as against outgoings may be carried forward to succeeding accounting periods, provided that it is the same video production involving the same copyright owners.
- 6.4.3 It has been agreed separately that copies returned to warehouse and credited as returned during the months of January and February may be deducted on the sales report as per 31 December the preceding year. Such returns must be reported to NCB by 28 February at the latest.

7 AUDIT

7.1 Royalty Audit

7.1.1 NCB shall have the right to check all the operations of the Distributor affected by this Contract. The Distributor shall under no pretext refuse or delay NCB's right to carry out audit activities.

7.1.2 The Distributor shall ensure that documents required to account for incomings and outgoings from his warehouse are kept in a form which will enable NCB to carry out accurate and convenient audits. The Distributor shall maintain a clear and precise accounting system which will permit the preparation of accurate returns to NCB and allow NCB's copyright auditors to check such returns. If the Distributor's accounting system does not come up to these standards and consequently entails extraordinary audits, the Distributor shall defray NCB's expenses caused by such audits.

7.2 Confidential Information

7.2.1 NCB guarantees that confidential information on the Distributor's business and activities shall not be imparted to third parties unjustified.

8 TERM OF THE CONTRACT

8.1 Notice of Termination

- 8.1.1 The Contract shall be effective for repeated terms of one year and may be terminated by either party giving a three-month written notice for expiry at the end of a calendar year. First possibility for termination will be as at 31 December 2001.
- 8.1.2 NCB reserves the right to terminate the Contract by giving fourteen days notice if the Distributor fails to perform any of his contractual obligations.
- 8.1.3 In the event of the filing by the Distributor of a bankruptcy petition, the suspension of payments by the Distributor, the bankruptcy of the Distributor or the opening up of negotiations for a composition NCB shall be entitled to terminate the Contract forthwith.
- 8.1.4 Termination of the Contract shall be sent by registered mail.
- 8.1.5 Upon termination of the Contract all claims for NCB royalties fall due for immediate payment, including the Distributor's unaccounted stock of video cassettes.
- 8.1.6 Should the Distributor wish to transfer his stock of entertainment videos to any third party, a written permission from NCB is required, unless the NCB royalties payable are accounted in cash to NCB in connection with the transfer.

8.2 Commencement Date

- 8.2.1 This Contract made between NCB and the below Distributor shall take effect on _____
_____.

Date

NCB

Date

Distributor

ANNEX 1 • DEFINITIONS – PRODUCTION CATEGORIES

Entertainment Video – covered by this Contract

An entertainment video is an audio-visual production the contents of which are typically – but not solely – the recording of a revue, a concert, a musical, an opera musical, an opera, a stage performance, a sketch, a comedy show etc.

Entertainment videos may contain a substantial part of music, however, they have not been produced with a view to promoting a particular sound carrier.

Music Video – *not* covered by this Contract

A music video is produced by a record company mainly with a view to promoting a sound carrier release, e.g. with a view to being broadcast in chart programmes on television and music channels, and with a view to being released more or less at the same time on a commercial video (VHS cassette) for sale or rental for private and domestic use.

The commercial product referred to as a music video does not solely have to contain reproduction in sound and picture of musical works; interviews with performing artists, studio recordings etc. may be part of the contents.

A music video may also consist of compilations of the performances of various artists, however, it cannot consist of sheer recordings of concerts, operas and musicals. Entertainment videos, feature films and other categories, for which special NCB agreements and terms apply, can never fall within the definition of a music video.

Disputed Categories

If the category is disputed, it rests with NCB to make the final decision as to which category to use for the disputed production.

ANNEX 2 • NCB ROYALTIES (CF. CLAUSES 5.2.4 + 5.2.8)

The Synchronization Fee is a fixed amount of DKK 2.75 per recorded second of NCB repertoire (cf. clause 5.2.8).

For entertainment videos containing concerts, operas, musicals and opera musicals it may be necessary to negotiate a special price and obtain an additional licence from the copyright owner (cf. 2.2.2).

The Mechanical Fee of 9.009% pr copy is reached as follows (cf. clause 5.2.4)

Basic royalty fee	11.000%	
Cover deduction (10%)	- 1.100%	¹
Reduction for discounts (9%)	- 0.891%	²
Net royalties	<u>9.009%</u>	

¹ Flat rate deduction for video cover expenses paid by the Distributor

² Flat rate deduction for discounts granted by the Distributor to his dealers

ANNEX 3 • MINIMUM/MAXIMUM

Minimum

As per 1 July 1997: PPD = DKK 50.00 per copy

As per 1 January 1999: PPD = 55.50 per copy

Maximum

As per 1 July 1997: PPD = DKK 100.00 per copy

As per 1 January 1999: PPD = 105.50 per copy

The minimum and maximum PPD's are subject to adjustments once a year according to the changes of the audio-CD PPD. For the adjustment of the PPD's FDV (the Association of Danish Video Distributors) and NCB have agreed to apply the below formula, which is described in the Protocol of this Contract:

- Minimum PPD for entertainment videos = minimum PPD for audio-CD x 1,1489
- Maximum PPD for entertainment videos = full price PPD for audio-CD x 1,1489

ANNEX 4 • INTEREST & ADDITIONAL FEES

Valid as at 1 January 1998

The interest rate applicable to late payment and any other instance where interest may be charged according to the provisions of this Contract shall be 13% p.a.

Any reminder sent by NCB to the Distributor shall be charged the Distributor with DKK 100.00 each reminder. This applies to any reminder whether it is due to failure to report releases/sales in time or non-payment of invoices.

Any collection charges due to non-payment by the Distributor shall be debited to the Distributor according to current rates.



**Nordisk Copyright Bureau
Hammerichsgade 14
DK-1611 Copenhagen V
Denmark**

**Tel: (+45) 33 36 87 00
Fax: (+45) 33 36 46 90**

**e-mail: ncb@ncb.dk
www.ncb.dk**