



Department of Defense DIRECTIVE

NUMBER 5535.7

November 1, 1985

Certified Current as of November 21, 2003

ASD(PA)

SUBJECT: License Agreements with Foreign Performing Rights Societies

References: (a) Sections 101, 102, 201, 501, 506 of title 17, United States Code
(b) Section 2386 of title 10, United States Code

1. PURPOSE

This Directive establishes policy, assigns responsibilities and prescribes procedures for negotiating license agreements and payment of performance fees to foreign performing rights societies for the use of copyrighted works, under references (a) and (b).

2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; and the Defense Agencies (hereafter referred to collectively as "DoD Components").

3. DEFINITIONS

3.1. Performance Fee. A negotiated payment made to the performing rights society in full compensation for granting permission to perform copyrighted works licensed by the society.

3.2. Performing Right. In relation to a copyrighted work, a license to do, or authorize other persons to do, any of the following:

3.2.1. Perform the work in public.

3.2.2. Broadcast the work.

3.2.3. Cause the work to be transmitted to subscribers over wired systems such as closed-circuit television or relay services.

3.3. Performing Rights Society. An association of composers, authors, and publishers of copyrighted works that administers, on behalf of its members, rights granted to them under copyright legislation.

4. POLICY

4.1. The laws of many foreign countries proscribe performance of copyrighted works without the permission of the copyright owner, whether for profit or not. Representing their members and members of affiliated societies worldwide, foreign performing rights societies may grant blanket licenses authorizing performance of copyrighted works. These blanket licenses are in the form of contracts, and are negotiated on an annual basis.

4.2. It is DoD policy to:

4.2.1. Recognize the rights of copyright owners by establishing procedures, consistent with the DoD mission and worldwide commitments, for negotiating with foreign performing rights societies and paying for performing rights to copyrighted works.

4.2.2. Finance performance fees paid to foreign performing rights societies pursuant to negotiated license agreements from that portion of the DoD operation and maintenance appropriation allocated to each of the Unified Commands.

5. RESPONSIBILITIES

5.1. The Director, American Forces Information Service (AFIS) ,shall:

5.1.1. Designate local contracting officers, as geographically appropriate, to negotiate a license agreement for performing rights.

5.1.2. Establish policies and procedures for the payment of performance fees to foreign performing rights societies.

5.1.3. Provide advice and assistance to local contracting officers, as necessary, during the negotiation process.

5.1.4. Ensure that station commanders of all outlets of the American Forces Radio and Television Service (AFRTS) are aware of their responsibilities regarding payment of fees, and that they cooperate with local contracting officers during the negotiation process.

5.1.5. Review and approve each license agreement prior to execution by the designated contracting officer.

5.2. Responsibility for providing legal advice and assistance, as necessary, to the contracting officer negotiating a license agreement for performing rights and for providing a legal review of each license agreement prior to execution by the designated contracting officer is assigned to the Military Departments designated below.

5.2.1. Department of the Army: Belgium, France, the Federal Republic of Germany, Korea, Liberia, Mali, Republic of Panama, Senegal, and Republic of Zaire.

5.2.2. Department of the Navy: Ethiopia, Iceland, Italy, and Portugal.

5.2.3. Department of the Air Force: Australia, Canada, Denmark, Egypt, Greece, India, Japan, Luxembourg, Nepal, Netherlands, Norway, Oman, Pakistan, Saudi Arabia, Spain, Turkey, and United Kingdom.

5.3. The Unified Commander may assign single-Service responsibility for providing legal advice and assistance concerning, and review of, proposed performing rights licensing agreements in countries where such assignment has not already been made under this Directive.

6. PROCEDURES

6.1. The DoD Components shall respond to requests for payment of performance fees or royalties from foreign performing rights societies by forwarding these to the Director, AFIS, with a copy to the Judge Advocate General (TJAG) of the Military Department designated in accordance with the provisions of paragraph 5.2. or 5.3., above.

6.2. The local contracting officer shall negotiate for an irrevocable, non-exclusive, non-transferable, paid-up license to reproduce, arrange, translate, abridge, recast, deliver,

dramatize, perform, or use, through any media, including but not limited to radio, television, phonograph, motion-picture, and wired-sound systems; and in person, in public or private, in any visual or audible manner, any and all of the literary, dramatic, musical, and artistic works in the performing rights societies' repertoires during the life of this agreement, which the United States Armed Forces are not otherwise licensed to use.

6.3. Prior to execution by the local designated contracting officer, copies of the license agreement shall be forwarded to the Director, AFIS, and to TJAG of the Military Department designated in accordance with the provisions of paragraph 5.2. or 5.3., above. This Directive supersedes any regulatory provisions of the Military Departments that delegate to a specific office or individual the authority to execute these license agreements.

7. EFFECTIVE DATE

This Directive is effective immediately.

A handwritten signature in black ink, reading "William H. Taft, IV". The signature is fluid and cursive, with a long horizontal stroke at the end.

William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 1

E1. Selective List of Foreign Performing Rights Societies

E1. ENCLOSURE 1

SELECTIVE LIST OF FOREIGN PERFORMING RIGHTS SOCIETIES

- AUSTRALIA - APRA (Australian Performing Rights Association Ltd.)
- BELGIUM - SABAM (Societe Belge des Auteurs, Compositeurs et Editeurs)
- CANADA - CAPAC (Composers, Authors and Publishers Association of Canada Ltd.)
- ENGLAND - PRS (Performing Rights Society Ltd.)
- GERMANY - GEMA (Gesellschaft fur musikalische Auffuhrungs und mechanische Vervielfaltigungsrechte)
- GREENLAND - Represented by Selskabet til Forvaltning af Internationale Komponistrettigheder i Danmark (KODA)
- ICELAND - STEF (Samband Tónskálda og Eigenda Flutningsréttar)
- ITALY - SIAE (Societa Italiana degli Autori ed Editori)
- JAPAN - JASRAC (Japanese Society of Rights of Authors and Composers)
- NETHERLANDS - BUMA (Het Bureau Voor Muziek Auteursrecht)
- NORWAY - TONO (Norsk Komponistforenings Internasjonale Musikkbyrå)
- PORTUGAL - SPA (Sociedade Portuguesa de Autores)
- SPAIN - SGAE (Sociedad General de Autores de Espana)