



**AUDIT CHARTER FOR ONLINE & MOBILE
LICENSING**

AUDIT CHARTER FOR ONLINE & MOBILE LICENSING ("AUDIT CHARTER")

This Audit Charter is an undertaking between the member societies of BIEM for the purpose of setting standards in relation to royalty audits of Online & Mobile Music Service Providers (MSPs) using the BIEM member societies' repertoire.

1. INTRODUCTION

Each Society is a member of BIEM and under the statutes of BIEM it enters into a reciprocal agreement with each other Society authorising the other Society, in the territory of the other Society, to manage and to represent the Society's Repertoire, including licensing and controlling the exploitation of the Society's Repertoire in that territory.

Each Society shall ensure that every Licence/Agreement which it enters into with a Music Service Provider shall be in writing and validly executed and shall contain provisions entitling the Society to conduct audits of that Music Service Provider.

Furthermore, each Society shall ensure that the audit clauses within the licenses that it issues enable it to carry out audits of Music Service Providers to whom it has granted a Licence/Agreement to the applicable minimum common standards relating to audits of Music Service Providers as set out in this Audit Charter and that it carries out every audit in accordance with these and without limitation shall do so with not less than the minimum frequency laid down by such minimum common standards and shall in each audit cover every accounting period since the immediately preceding audit of the Music Service Provider.

Bearing in mind the importance to each Society and its members of ensuring that its Repertoire is properly managed and represented in the territory of each other Society, the Societies have resolved to adopt certain minimum common standards to be observed by each Society in carrying out such management and representation (as it is provided for but not limited to BIEM Statutes and BIEM contracts of representation), including, without limitation, common standards relating to audits of Music Service Providers.

Each Society agrees to ensure that an audit report is prepared and information relating to that audit is made available to any other interested Society and its member upon reasonable request and within the limits of the other Society's and member's repertoire. This may, in relevant circumstances, be subject to the terms of non-disclosure agreements made with third party audit providers and, in such contexts, may also need clearance from the auditee.

The purpose of such minimum common standards relating to audits of Music Service Providers is to ensure that:

- audits are undertaken by the most appropriate Society in the licensee's territory of operation/territory of administration in the best possible and most effective way and sufficiently frequently;
- there is an acceptable level of transparency so that each Society, on behalf of its members and as far as the repertoire it represents is concerned, is able to satisfy itself that each other Society is carrying out its audit obligations in accordance with the agreed minimum common standards and to provide a remedy where any Society fails to carry out such obligations in accordance with such standards;
- the information provided by the Music Service Provider, also in relation to the usage of repertoire, is complete, correct, and has been supplied in time, to ensure royalties are properly accounted for by the Music Service Provider; and

- in principle, audits results will be evaluated on a country by country basis.

Therefore, this Audit Charter and supporting schedules set out matters in relation to, amongst others:

- Responsibility for audits
- Frequency and timing of audits
- Reporting requirements
- Non-compliance with minimum common standards

2. DEFINITIONS

In this Audit Charter (including the schedules) the following words and expressions have the following meanings:

"BIEM" is an international organisation that groups together societies administering or having through their statutes the capacity to administrate the mechanical reproduction rights, in view to represent and defend their interests.

"Licence/Agreement" means a Licence/Agreement between a Society (or a group of Societies) and a Music Service Provider which grants the Music Service Provider the right to proceed to the making of sound recordings of the works of the BIEM Societies repertoire, to make available copies of these recordings digitally (including, but not limited to online and mobile exploitation) and to put such recordings into circulation with a view to their sale or making available to the public for private use.

"Licensing Society" means a Society (or a group of Societies) which has entered into a Licence/Agreement with a Music Service Provider

"Music Service Provider" can be defined differently in certain societies.

"PEAC" means the Pan European Audit Committee of BIEM.

"Society" means a body of rights owners, member of BIEM, which owns, controls and represents the repertoire within a territory (or territories).

"Repertoire" is defined as the musical works for which rights have been entrusted to the Society and which can be granted to Music Service Providers within Licences/Agreements.

3. ROLE OF PEAC

PEAC exchanges experiences, information, and discusses problems encountered in the auditing field to find solutions which are applicable at international level.

The member societies of BIEM have agreed to put in place an audit plan under the auspices of PEAC.

PEAC recognise that there are different categories of Music Service Providers which enter into Licence/Agreements with the Societies and that, as far as royalty audits are concerned, PEAC has a role to play according to the type of Licence/Agreement.

4. MINIMUM COMMON STANDARDS

The minimum common standards relating to audit will vary depending on the category into which a Music Service Provider falls.

The minimum common standards relating to audit are as described in schedule one and schedule two.

The Societies agree that PEAC shall be entitled from time to time to make changes to the minimum common standards relating to any category of Music Service Provider or agree that other categories of Music Service Provider in addition to those set out above may be introduced from time to time.

Any such changes or additions shall be proposed by PEAC to the BIEM Management Committee for approval.

If not already in place technical standards for monitoring of transactional data will be developed. The aim is to receive complete transactional data in a specific format, real time or as a batch daily with monthly summaries. The technical monitoring will supplement the audits at the MSP. Technical monitoring allows early checks of test buys and verification of reports.

5. PERFORMANCE OF AUDITS

Each Society shall apply and perform the applicable minimum common standards of audit of Music Service Providers in all respects.

Each Society must be alert to the Statute of Limitation period in its own territory and where any delay in settlement of an audit has occurred, they have within their legal powers, remedies to ensure any claim remains within the Limitation period.

6. RESOURCES

Each Society agrees to carry out audits of Music Service Providers in the most effective possible way, using the most appropriate resources. Each Society will use its own suitably qualified and experienced audit staff and /or suitably qualified and experienced independent external auditors/accountants.

7. AUDIT COSTS

Each Society shall be responsible for the planning and budgeting of its audit costs.

The costs and expenses properly incurred in carrying out any audit of a Music Service Provider whether carried out by external auditors or by internal audit staff or both shall be paid and/or recouped according to Article 3 (e) of the Cannes agreement and to point 3 (h) of the relevant Schedule and in any case in a manner which does not discriminate against the Society carrying out the audit or any other Society or the members of the Society or the members of any other Society.

8. AUDIT REPORTS AND SUMMARIES

PEAC shall supply to BIEM Management Committee, a quarterly report on audits of Music Service Providers in such format and detail as the BIEM Management Committee shall from time to time specify.

9. DISTRIBUTIONS

The Societies undertake that they will distribute audit recoveries including any interest to the copyright owners under the normal distribution rules of each Society.

10. CONFIDENTIALITY

The Societies recognise that audits of Music Service Providers are carried out according to obligations of the confidentiality provisions in the Licence/Agreement with each Music Service Provider.

Each Society shall treat as confidential all information resulting from any audit undertaken except that it may disclose information for well founded reasons if and to the extent:

- required by the law of any relevant jurisdiction;
- required for disclosure according to its constitutional obligations;

the information has come into the public domain through no fault on its part.

11. DISPUTES AND FAILURE TO COMPLY WITH MINIMUM COMMON STANDARDS

In the event of any disagreement or dispute arising between the Societies concerning any matter covered by this Audit Charter or audit undertaken, the matter may be referred by either or any of them to PEAC, who shall act as experts, but not as arbitrators. PEAC shall then make a recommendation on the matter to the BIEM Management Committee.

If any Society considers that after having studied the final audit report of any audit of a Music Service Provider carried out by a Licensing Society and after having reviewed the audit working papers relating to such audit, that the audit has not been carried out in accordance with the applicable minimum common standards laid down by this Audit Charter, then the Society shall insist that a further audit is undertaken, to the minimum common standards.

If the Licensing Society agrees that the Society carries out the further audit, then the Licensing Society shall from its own resources reimburse the Society all the costs and expenses properly incurred by the Society in carrying out such inspection, review and further audit.

In the case of any disagreement or dispute concerning further audits being considered necessary due to non-compliance with the minimum common standards laid down in this Audit Charter, the first paragraph of this clause 11 applies. The BIEM Management Committee may decide that partial or complete reimbursement of costs incurred by further audit would be applied.

12. PARTNERSHIP

Nothing in this Audit Charter shall constitute or be deemed to constitute a partnership or joint venture between the Societies.

THE SCHEDULES AND APPENDICES

SCHEDULE ONE

Minimum common standards (downloads)

SCHEDULE TWO

Minimum common standards (ringtones)

SCHEDULE ONE

MINIMUM COMMON STANDARDS (DOWNLOADS)

Audit Elements

Every accounting period covered, on a rolling basis by a full audit.

Main Audit fields:

- Gross Revenues (as specified by the licence contract but would normally include revenues from direct sales, subscription revenues, relevant advertising revenues)
- Quantities of music items (downloads, on-demand streams etc.) delivered
- Quantities of non-music items (e.g. wallpapers etc) delivered where such items are offered as part of a subscription service which includes music items

Download Audits are conducted in four phases:

1. Pre-planning
2. Preparing the audit (risk analysis & testing)
3. Judgement of Internal processes and internal audit procedures
4. Audit activities (based on data)

1. Pre-planning

- Each society shall prepare an annual audit plan regarding download-audits, based on a risk-analysis; such risk-analysis should include problems experienced with data quality, late payment or reporting, banal keywords (e.g. 'unknown', 'traditional').
- The audit-plan shall be co-ordinated, where appropriate, with other societies.

2. Preparing the audit

In this phase the auditor tries, before visiting the Music Service Provider, to get detailed information about the company, products, customers, turnover etc. These procedures cover a routine review of information regularly submitted by the Music Service Provider to the Licensing Society. All checks should be carried out by the competent department within the Society and the results made known to the Audit (or equivalent) department.

- Get information from your (Invoicing and Front-Office) colleagues about their experiences with the Music Service Provider
- Collect data and information about the Music Service Provider's company:
 - Who owns the company? Are there any co-operations?
 - What is the business-model of the company?
 - What are the financial results and forecasts?
 - Get information from financial statements (annual accounts etc.)
 - Look at their previous reporting and their sales volumes in different periods - evaluate. Look at the prices reported.
 - What are the latest developments in (number of) employees
 - Type of licence/Agreement signed

- Collect data and information about the products and customers
 - What (digital music) products does the company sell?
 - Get information from by example advertising - and look for different prices and content etc.
 - Are all of the products offered covered in their license?
 - Does the Music Service Provider have other music business than music downloads such as Karaoke (demands special agreement) and music cards?
 - What channels are used to sell the products (WAP, Website etc.)?
 - Who are the customers of the Music Service Provider?
 - In how many countries are the products sold?
 - What is the repertoire used by the Music Service Provider?
 - Who are the suppliers of the repertoire?
 - Is the repertoire bought at firm price or is it a % of turnover or a combination of both?
 - Are they selling any unlicensed repertoire?
 - Request details of any undistributable income, i.e. royalties, fees and other sums payable in respect of the exploitation of a Musical Work which temporarily cannot be paid out as there is a dispute relating to such Musical Work which affects who is entitled to receive such monies
 - Is there unidentified income, i.e. royalties, fees and other sums paid pursuant to a Licence in respect of a named Musical Work which Musical Work is not identified by the society as being in its repertoire of Musical Works that it has the right to license;
 - Request details of any unmatched uses which are not being reported? i.e. royalties, fees and other sums paid pursuant to a licence for Online Usage to JV Co or a Sub-Agent which cannot be identified as being earned from the exploitation of a named Musical Work;

- Collect data and information about the reporting to societies
 - Where there are foreign activities, are sales in all countries reported to the same society?
 - Have all sales in all countries been done by own companies?
 - Does every single country report? Or is reporting/server situated in one country? Which?

- Make specific checks by comparing delivered data as follows:
 - Total sales vs previous periods and market share
 - Change in split of income across markets or territories
 - Royalties reported per item (where applicable e.g. downloads) v royalties calculable from advertised sales price
 - Level of minimum transactional royalties applied
 - Change in ratio of turnover, i.e. royalty income divided by number of transactions
 - Change in % of music downloads to total downloads, especially in regard to bundling of different usage types
 - Details of relevant advertising carried by the licensee

- Carry out 'test purchases' of content. These will either be purchases of a number of downloads or the payment of a subscription e.g. for subscription streaming service. Test purchases should cover the periods and territories applicable to the license and audit, different usage types, e.g. subscriptions and bundling, different genres of repertoire, permanent and impermanent downloads and different payment methods. In such cases the auditing Society should record the following information:
 - Item purchased
 - Price paid

- Payment method
- Name of purchaser
- Date and time of purchase
- Type of purchase, e.g. subscription, stream, single track download, album download

When a full audit takes place, the auditor can check the licensee's systems and data to check that these transactions have been reported (phase 4).

3. Judgement of internal processes and internal audit procedures

In this phase the auditor tries, during a visit, to get detailed information about the Music Service Provider's internal processes and the status of the internal controls.

Discuss the following processes, procedures and controls and judge if the external auditor can rely on them.

Purchase to pay:

- What does the purchase process look like?
 - Activities
 - Responsibilities
 - Registrations
 - IT-Systems
 - (Internal) controls

Sales:

- What does the selling process look like?
 - Activities
 - Responsibilities
 - Registrations
 - (Internal) controls

Order to cash:

- In what way are the sales invoiced to the customers?
- How does the payment process take place?
 - Activities
 - Responsibilities
 - Registrations
 - IT-Systems
 - (Internal) controls

Record-to-Measure

- How are the download revenues reported in the financial system?
 - Activities
 - Responsibilities
 - Registrations
 - IT-Systems
 - (Internal) controls
- How do you generate the statements to the societies?

In General

- Put the information together into a figure and discuss the correctness of the figure with the Music Service Provider.
- A system check of the whole system - make a procedure description – data handling

4. Audit activities (based on data)

In this phase the auditor checks the information submitted by the Music Service Provider by verifying and comparing data. Use the results from phase 3 to specify the audit activities.

Purchase to pay:

- See all involved contracts with interested parties

Sales:

- Check the prices
- Check sales lists
- See list over which magazines etc. where advertising are put in.

Order to Cash:

- See invoices to consumer(s)

Record to Measure

- Check, if possible, traffic via gateway to get an idea of the correctness of reporting
- Check whether the same downloads are sold to different prices via different sales channels/advertising.
- Check whether deduction has been made because there are discrepancies between the traffic information received from gateway and the payment from gateway
- Check that the Music Service Provider has not deducted cost to gateway (only tax can be deducted).
- Look at treatment of non-delivery, incomplete transactions, unfulfilled subscriptions

Statement to copyright organisation

- If reporting for your territory goes to another society - then demand a copy of the reporting by mail link
- Follow/check the test-downloads through the entire system: have all transactions been reported to the society?

Working papers, reports and summaries

- Working papers shall include standing data and be maintained in accordance with best practice in each territory.
- Reports shall be prepared in accordance with best practice in each territory, but shall be comprehensive and reflect the major points of the audit.
- Summaries shall reflect the major points of audit together with a statement of claim and summary of findings. Any other matters that the auditors feel necessary to bring to the attention of the Licensing society, BIEM member societies or PEAC, may also be included.
- Standard reporting forms to be used by each society

SCHEDULE TWO

MINIMUM COMMON STANDARDS (RINGTONES)

Audit Elements

Every accounting period covered, on a rolling basis by a full audit.

Main Audit fields:

- Gross Revenues (as specified by the licence contract but would normally include revenues from direct sales, subscription revenues, relevant advertising revenues)
- Quantities of music items (ringtones) delivered
- Quantities of non-music items (e.g. wallpapers etc) delivered where such items are offered as part of a subscription service which includes music items

Ringtone Audits are conducted in four phases:

1. Pre-planning
2. Preparing the audit (risk analysis & testing)
3. Judgement of Internal processes and internal audit procedures
4. Audit activities (based on data)

1. Pre-planning

- Each society shall prepare an annual audit plan regarding ringtone-downloads, based on a risk-analysis; such risk-analysis should include problems experienced with data quality, late payment or reporting, banal keywords (e.g. 'unknown', 'traditional').
- The audit-plan shall be co-ordinated, where appropriate, with other societies.

2. Preparing the audit

In this phase the auditor tries, before visiting the Ringtone Provider, to get detailed information about the company, products, customers, turnover etc. These procedures cover a routine review of information regularly submitted by the Ringtone Provider to the Licensing Society. All checks should be carried out by the competent department within the Society and the results made known to the Audit (or equivalent) department.

- Get information from your (Invoicing and Front-Office) colleagues about their experiences with the Ringtone Provider
- Collect data and information about the Ringtone Provider's company:
 - Who owns the company? Are there any co-operations?
 - What is the business-model of the company?
 - What are the financial results and forecasts?
 - Get information from financial statements (annual accounts etc.)
 - Look at their previous reporting and their sales volumes in different periods - evaluate. Look at the prices reported.
 - What are the latest developments in (number of) employees
 - Type of licence/Agreement signed

- Collect data and information about the products and customers
 - What (digital music) products does the company sell?
 - Get information from by example advertising - and look for different prices and content etc.
 - Are all of the products offered covered in their license?
 - Does the Ringtone Provider have other music business than ringtones such as Karaoke (demands special agreement), ring-back tones and music cards?
 - What channels are used to sell the products (WAP, Website etc.)?
 - Who are the customers of the Ringtone Provider?
 - In how many countries are the products sold?
 - What is the repertoire used by the Ringtone Provider?
 - Who are the suppliers of the repertoire?
 - Is the repertoire bought at a firm price or is it a % of turnover or a combination of both?
 - Are they selling any unlicensed repertoire?
 - Request details of any undistributable income, i.e. royalties, fees and other sums payable in respect of the exploitation of a Musical Work which temporarily cannot be paid out as there is a dispute relating to such Musical Work which affects who is entitled to receive such monies.
 - Is there unidentified income, i.e. royalties, fees and other sums paid pursuant to a Licence in respect of a named Musical Work which Musical Work is not identified by the society as being in its repertoire of Musical Works that it has the right to license;
 - Request details of any unmatched uses which are not being reported i.e. royalties, fees and other sums paid pursuant to a licence for Online Usage to JV Co or a Sub-Agent which cannot be identified as being earned from the exploitation of a named Musical Work;

- Collect data and information about the reporting to societies
 - Whether there are foreign activities, are sales in all countries reported to the same society?
 - Have all sales in all countries been done by own companies?
 - Does every single country report? Or is reporting/server situated in one country? Which?

- Make specific checks by comparing delivered data as follows:
 - Total sales vs previous periods and market share.
 - Change in split of income across markets or territories
 - Music turnover in % of the total turnover (pictures, games, love horoscopes etc.)
 - The turnover split between mono, poly and true tones.
 - Level of minimum transactional royalties applied
 - Change in ratio of turnover, i.e. royalty income divided by number of transactions
 - Change in % of music downloads to total downloads, especially in regard to bundling of different usage types
 - Royalties reported per item (where applicable e.g. ringtones) v royalties calculable from advertised sales price
 - Details of relevant advertising carried by the licensee

- Carry out 'test purchases' of content. These will either be purchases of a number of ringtones or the payment of a subscription. Test purchases should cover the periods and territories applicable to the license and audit, different usage types, e.g. subscriptions and bundling, different genres of repertoire, permanent and impermanent downloads and different payment methods. In such cases the auditing Society should record the following information:

- Item purchased
- Price paid
- Payment method
- Name of purchaser
- Date and time of purchase
- Type of purchase, e.g. subscription, stream, single track download, album download

When a full audit takes place, the auditor can check the licensee's systems and data to check that these transactions have been reported (phase 4).

3. Judgement of internal processes and internal audit procedures

In this phase the auditor tries, during a visit, to get detailed information about the Ringtone Provider's internal processes and the status of the internal controls.

Discuss the following processes, procedures and controls and judge if the external auditor can rely on them.

Purchase to pay:

- What does the purchase process look like?
 - Activities
 - Responsibilities
 - Registrations
 - IT-Systems
 - (Internal) controls

Sales:

- What does the selling process look like?
 - Activities
 - Responsibilities
 - Registrations
 - (Internal) controls

Order to cash:

- In what way are the sales invoiced to the customers?
- How does the payment process take place?
 - Activities
 - Responsibilities
 - Registrations
 - IT-Systems
 - (Internal) controls

Record-to-Measure

- How are the download revenues reported in the financial system?
 - Activities
 - Responsibilities
 - Registrations
 - IT-Systems
 - (Internal) controls
- How do you generate the statements to the societies?

In General

- Put the information together into a figure and discuss the correctness of the figure with the Ringtone Provider.
- A system check of the whole system - make a procedure description – data handling

4. Audit activities (based on data)

In this phase the auditor checks the information submitted by the Ringtone Provider by verifying and comparing data. Use the results from phase 3 to specify the audit activities.

Purchase to pay:

- See all involved contracts with interested parties

Sales:

- Check the prices
- Check sales lists
- See list over which magazines etc. where advertising are put in.

Order to Cash:

- See invoices to consumer(s)

Record to Measure

- Check traffic via gateway to get an idea of the correctness of reporting
- Check whether the same ringtones are sold to different prices via different sales channels/advertising.
- Check whether deduction has been done because there are discrepancies between the traffic information received from gateway and the payment from gateway
- Check that the Ringtone Provider has not deducted cost to gateway (only tax can be deducted).
- Match the music turnover with the reported turnover to the society.
- Look at treatment of non-delivery, incomplete transactions, unfulfilled subscriptions

Statement to copyright organisation

- If reporting for your territory goes to another society - then demand a copy of the reporting by mail link
- Follow/check the test-ringtones through the entire system: have all transactions been reported to the society?

Working papers, reports and summaries

- Working papers shall include standing data and be maintained in accordance with best practice in each territory.
- Reports shall be prepared in accordance with best practice in each territory, but shall be comprehensive and reflect the major points of the audit.
- Summaries shall reflect the major points of audit together with a statement of claim and summary of findings. Any other matters that the auditors feel necessary to bring to the attention of the Licensing society, BIEM member societies or PEAC, may also be included.
- Standard reporting forms to be used by each society