

## **Annual Transparency Report of The Educational Recording Agency Limited (Company Number 02423219) ("ERA") for the year ended 31 March 2017**

### **Introduction**

This report is prepared for the Members of ERA. Its purpose is to provide transparency about the way in which ERA has operated during the financial year ended 31 March 2017.

It forms an "Annual Transparency Report" required by the Regulations<sup>1</sup>.

It had been prepared by the members of the Supervisory Committee of ERA<sup>2</sup> and submitted for audit as required by the Regulations.

The report should be read with the Directors' Report and Financial Statements of ERA for the year ended 31 March 2017<sup>3</sup> and the Articles of Association and approved Policies of ERA as described in the report and published on the ERA website at [www.era.org.uk](http://www.era.org.uk)

### **Audit and Publication**

The non-executive Directors of ERA have appointed Moore Stephens LLP of 150 Aldersgate Street, London, EC1A 4AB to audit the accounting information referred to in this report for the purposes of compliance with Regulation 21 (2) of the Regulations.

**The audit report from Moore Stephens concerning the accounting information referred to in this report is set out in Schedule 1<sup>4</sup>.**

Individual Statements have been made by each non-executive Director to support the publication of this Annual Transparency Report, including all declarations of conflicts of interest made and approved by the Board of Directors and noted in the company's Register of Interests.

**The Individual Statements are available for inspection by Members of ERA at ERA's registered office. This is at 1<sup>st</sup> Floor, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN.**

Once adopted by the Members of ERA, this Annual Transparency Report will be published alongside the Directors' Report and Financial Statements on the ERA website at [www.era.org.uk](http://www.era.org.uk) for the purpose of reporting in respect of the activities of the company during the financial year ended 31 March 2017.

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<sup>1</sup> The Collective Management of Copyright (EU Directive) Regulations 2016 – S.I. 2016 No. 221 which came into force on 10 April 2016.

<sup>2</sup> The supervisory function of ERA required by paragraph 8 of the Regulations is provided following agreement of ERA members by the non-executive Directors of ERA. This reflects the requirements of Article 14 within the Articles of Association of ERA.

<sup>3</sup> Attached as Schedule 2 – Regulation 21 (4) (a)

<sup>4</sup> Regulations 21 (2) (b) and (c)

The Annual Transparency Report will remain available on the ERA website for at least 5 years.

## **1. ERA Members**

The Members of ERA are listed on the ERA website at <http://www.era.org.uk/about-us/members>

ERA currently has 21 Members who represent the rights set out and described against their names within ERA Licence documents.

### **New Members**

During the year 560 Media Rights Limited applied and was admitted to membership of ERA as a member within Category 1 (Broadcasters).

560 Media Rights Limited became the agent for representation of Discovery Communications Europe Limited covering the rights relating to Discovery which were previously represented by Compact Collections Limited.

560 Media Rights Limited became a member of ERA from 10 March 2017. By agreement between ERA, Compact Collections Limited and 560 Media Rights Limited for the purposes of the distribution made by ERA in March 2017, the ERA mandate from 506 Media Rights Limited was deemed to have applied from 1 January 2017.

In addition, PICSEL LIMITED whose registered number is 09899186 and whose registered office is 59 Tranquil Vale, London, SE3 0BS has indicated that it expects to take forward an application for membership during the year commencing 1 April 2017.

Information about the Members of ERA, Membership Criteria, how representative bodies may apply for membership of ERA and the terms of membership agreements, which all ERA members are required to observe, are set out in the updated Articles of Association and the standard Membership Agreement terms both published on the company website at [www.era.org.uk](http://www.era.org.uk).

In addition, ERA operates a **Code of Conduct** relating to its activities. The Code was updated during the year to reflect the change to ERA Membership. The attention of all ERA licensees is drawn to the ERA Code of Conduct and its terms through news updates and other information published on the ERA website.

ERA's published Code of Conduct includes details of the complaints procedure to be adhered to, should a complaint be made.

No complaints about compliance with the Code were raised with ERA or with Ombudsman Services Limited relating to ERA during the year.

## **2. Governance Structure of ERA**

ERA is a private company limited by guarantee and has no share capital<sup>5</sup>. ERA owns one dormant subsidiary company, Educational Resource Agency Limited<sup>6</sup>.

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<sup>5</sup> Regulation 21 (4) (d)

<sup>6</sup> Regulation 21 (4) (e)

ERA operates on a not-for-profit basis. ERA operates as a collective management organisation for the purposes of the Regulations.

Each Member of ERA is entitled to nominate one representative who, subject to election by the Members of ERA, is then invited to be a non-executive Director of ERA.

Each non-executive Director of ERA also forms part of the supervisory function of ERA for the purposes of compliance with the Regulations.

Procedures for the appointment of Directors are set out in the Articles of Association of ERA.

### **3. Amounts deducted for the purposes of Social, Cultural and Educational Services<sup>7</sup>**

The approved budget for Management Fees during the financial year ended 31 March 2017 made provision for ERA to pay;

(a) Membership Fees for ERA to be a member of the British Copyright Council <http://www.britishcopyright.org/>, the Alliance for Intellectual Property <http://www.allianceforip.co.uk/> and FACT <http://www.fact-uk.org.uk/>, as bodies working to protect and promote copyright owners, including the Members of ERA. Fees for ERA's memberships totaled £ 11,859. Following a restructuring of FACT during 2016, ERA has not renewed formal membership of FACT from 1 January 2017, but maintains working links with FACT concerning promotion of education and awareness initiatives relating to the value of copyright.

(b) a contribution of £3,750 towards the work of the Copyright Hub with particular reference to the links between the work of the Education Licensing Working Group [http://www.copyrighthub.org/copyrighthub\\_org/community/working-groups/elwg/](http://www.copyrighthub.org/copyrighthub_org/community/working-groups/elwg/)

(c) a contribution of £3,000 towards the cost of the British Copyright Council running its annual training course on copyright in conjunction with WIPO (World Intellectual Property Organisation).

[http://www.wipo.int/academy/en/courses/professional\\_training/wipo\\_bcc.html](http://www.wipo.int/academy/en/courses/professional_training/wipo_bcc.html)

(d) a sponsorship fee of £3,500 to support Learning On Screen Awards held on 28 April 2016.

ERA did not contribute to any other third party social, cultural or educational services during the financial year ended 31 March 2017.

### **4. ERA Activities<sup>8</sup> during the year to 31 March 2017**

ERA's activities during the year related to the effective operation and application of the copyright licensing scheme known as the ERA Licence.

All the activities of ERA concerned or linked to the effective operation of the ERA Licence.

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<sup>7</sup> Regulation 21 (4) (g)

<sup>8</sup> Regulation 21 (4) (b)

ERA did not undertake any activities which were separate from its activities as a collective management organisation operating and applying the terms of the ERA Licence for the benefit of its members<sup>9</sup>.

## **Governance**

ERA updated its Membership Agreement and related governance documents. All the updated documents, including its updated Distribution Policy (including its Policy on Non-distributable amounts), its Investment Policy and its Policy on Deductions were approved by the ERA Members at the Annual General Meeting held on 15 September 2016.

In preparation for the Annual General Meeting held on 15 September 2016, all ERA Members who had granted mandates to ERA prior to 9 April 2016 were given notice of their rights relating to application of the Regulations<sup>10</sup>. The notice was published on the ERA website at [www.era.org.uk](http://www.era.org.uk)

## **Office move**

The lease of ERA's office at 60 Gray's Inn Road included a rent review and break clause relevant from 1 February 2017. A report was secured on the likely increase in rent if the break clause was not exercised.

The expected increase was significant and the Board agreed that alternative accommodation should be found to allow for the break clause to be applied.

As a result of this and discussions with CLA, ALCS and PLS, it was agreed that ERA could license office space within the offices occupied by CLA, ALCS and PLS at 1<sup>st</sup> Floor, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN.

A successful office move was completed in December 2016 and previous lease of ERA's offices in Gray's Inn Road terminated on 31 January 2017.

## **ERA Licence**

The ERA Licensing scheme is operated by reference to s 35 and paragraph 6 Schedule 2 Copyright, Designs and Patents Act 1988 as amended by The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 (S.I. 2014 No.1372).

All ERA Licences are granted to educational establishments. They cover schools, colleges, universities and other educational establishments meeting the definition set out in section 174 Copyright, Designs and Patents Act 1988.

ERA licensing activity is limited to educational establishments in England, Scotland, Wales and Northern Ireland. By agreement of ERA Members and the relevant national authorities, licences are also granted for the benefit of educational establishments in the Isle of Man, Jersey and the Bailiwick of Guernsey.

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<sup>9</sup> Regulation 21 (4) (b)

<sup>10</sup> Regulation 4 (i)

The terms of the ERA Licence and the tariffs applied for different types of educational establishment are set out and published on the ERA website at [www.era.org.uk](http://www.era.org.uk).

### **Licensing Activities**

Virtually all schools in England, Scotland, Wales, Northern Ireland and all schools in the Isle of Man, Jersey and the Bailiwick of Guernsey took out and had the benefit of an ERA Licence during the year from 1 April 2016 to 31 March 2017.

This was helped by the central funding arrangement in place between ERA and the Department for Education under which ERA Licence fees for all funded schools in England were paid centrally in April 2016. Licence documentation and information about the licence was then sent to all schools by CEFM as ERA's agent.

A new agreement was secured with the DfE in December 2016 to extend the central funding arrangements for at least a further three licensing years from 1 April 2017.

ERA Licence renewals were successfully put in place with virtually all educational establishments of Further Education and Higher Education effective from 1 August 2016. FE and HE tariff rates remained unchanged from the rates which have applied since 1 August 2014.

### **Working with technology providers**

As the use of virtual learning environments within education increases, ERA has continued to develop its programme of working with, and establishing agreements with, the technology providers for educational establishments who support educational establishments/teachers/lecturers and students accessing back-up off-air recordings under the ERA Licence either through streaming services or through approved exchange systems.

These agreements also enable ERA to receive reporting on the use of ERA licensed recordings within the services. This reporting helps to provide indicative use of programmes to support allocation and distribution of ERA revenue shares by individual ERA members.

### **Working with licensees**

ERA has continued to provide the secretariat for the Education Licensing Working Group. Minutes of its meetings and the 2016 Annual Report of the activities of the Group are posted on the ELWG website at: <http://www.copyright.org/organisation/elwg/>

### **Extended Collective Licensing (ECL)**

ERA Licences do not include any Extended Collective Licensing ("ECL") scheme.

### **Digital Single Market proposals**

ERA has continued to monitor and engage with development of the European Commission's Digital Single Market proposals. In particular, the changes proposed which might enable a UK establishment licensed by ERA to enable access to ERA licensed resources by students when they access secure environments from Member States across the EU, are being supported.

The protection of the s 35 CPDA licensing model against the background of BREXIT trade negotiations and the international application of copyright rules, also remains a focus for ERA and its members.

#### **4. Information on refusals to grant a licence<sup>11</sup>**

ERA is mandated to license “educational establishments” as defined by s 174 Copyright Designs and Patents Act 1988<sup>12</sup>.

If an applicant applies to ERA for a licence which does not meet the statutory definition of an “educational establishment” then ERA is unable to grant a licence.

ERA works with applicants to ensure that, when the statutory definition is met and a licence is requested, an ERA Licence will be offered at the relevant published tariff rate(s).

No educational establishment operating within the United Kingdom who applied for an ERA Licence was refused an ERA Licence during the year ended 31 March 2017.

#### **5. A copy of the Financial Statements for The Educational Recording Agency Limited (Company registration number 02423219) for the year ended 31 March 2017, including the Directors’ Report forming part of the Financial Statements is attached as Schedule 2<sup>13</sup>.**

The Financial Statements and the Directors’ Report for the year ended 31 March 2017 include: -

The total revenue from licences granted for the year ended 31 March 2017

The total costs incurred by ERA in administering licences

Detailed Profit and Loss Account on administration expenditure of ERA  
including a breakdown of personnel costs.

#### **6. Directors and officers**

The directors who served on the Board of ERA during the year ended 31 March 2017 were

Ms D C Annetts  
Mr A R Chowns  
Mr R Combes  
Mr T De Lange  
Mrs H A Evans  
Ms K E Fishman  
Ms E S Gibson

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<sup>11</sup> Regulation 21 (4) (c)

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/1988/48/section/174>

<sup>13</sup> Regulation 21 (4) (h)

Mrs A F Hales	(resigned 30 June 2016)
Mr A Harrower	
Ms C J Hyndman	(appointed 19 January 2017)
Mr W R Jackson	
Mr D Johnson	(resigned 18 January 2017)
Mr J Kimberlin	
Mr L G Lavender	(appointed 1 July 2016)
Mr M J Lee	
Ms S M Malden	
Mr P R Mason	
Mr J V P O'Sullivan	(appointed 10 March 2017)
Mrs C G Payne	
Mr J F Smith	(resigned 31 March 2017)
Mr J W Vandermeer	
Miss S Welsh	(resigned 30 September 2016)
Mr K J Whitehead	(appointed 1 October 2016)
Mr C Zimmermann.	

Mr Horace Trubridge was appointed a Director on 1 April 2017.

No remuneration was paid to any individual directors during the year ended 31 March 2017<sup>14</sup>.

Procedures for the appointment of Directors are set out in the ERA Articles of Association and the ERA Membership Agreement and copies of these documents are published and made accessible on the ERA website at [www.era.org.uk](http://www.era.org.uk)

The Chief Executive officer of ERA received emoluments (including pension and benefits) during the year ended 31 March 2017<sup>15</sup> as follows: -

Salary £ 100,000 – Pension Contributions - £19,744 and Private Health insurance -£2,823

ERA paid £2,135 for insurance to cover its Directors and Officers against liabilities in relation to their duties to the company.

## **7. Licensing Revenues**

All licences issued during the year ended 31 March 2017 were in the form of the current ERA Licence and the categories and types of rights represented by ERA on behalf of its members is set out within the terms and conditions of the ERA Licence<sup>16</sup>.

As at 1 April 2016 ERA held £2,186,880 as licence fees collected from educational establishments of Further and Higher Education and additional educational licensees, such as language schools, whose ERA Licences ran from 1 August 2015 to 31 July 2016. Schools licences are issued to apply from 1 April to 31 March annually.

Between 1 April 2016 and 31 March 2017 ERA received £12,100,641 as licence fees from the issue of ERA Licences.

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<sup>14</sup> Regulation 21 (4) (f)

<sup>15</sup> Regulation 21 (4) (f)

<sup>16</sup> Regulation 21 (4) (j)

As at 1 April 2017 ERA held £2,151,182 as licence fees collected from educational establishments of Further and Higher Education whose licences run from 1 August 2016 to 31 July 2017. These sums relate to licence fees relevant for the period 1 April 2017 to 31 July 2017 and fall due for distribution in the financial year commencing 1 April 2017.

The total revenue from the current ERA Licence during the year ended 31 March 2017 was £12,064,930.

No sums were held by ERA as non-distributable amounts<sup>17</sup>.

## **8. Policy on the use of Non-Distributable Amounts**

ERA only licenses the use of works and performances which fall within the definition of ERA Repertoire under the ERA Licence.

The copyright exception and limitation provisions in s35 and paragraph 6 Schedule 2 Copyright, Designs and Patents Act 1988 apply for the benefit of educational establishments making use of rights falling outside ERA Repertoire.

Additionally, the proportions in which ERA revenue is allocated amongst its Members are determined by agreement between the Members as reflected in this approved ERA Distribution Policy. ERA distributions are therefore not affected by any uncertainties over the ownership or control of any work or performance or uncertainty over whether any rights subsist in the same.

ERA is therefore able to allocate all distributable revenue to its Members as owners of ERA Repertoire in accordance with the approved ERA Distribution Policy without provision for claims from owners who are not ERA Members or represented by ERA Members at the time when approval for distributions is confirmed.

A policy for the use of non-distributable amounts is therefore not required or relevant to ERA activities.

## **9. Distribution Policy and Distributions**

The ERA Members have seen and approved the Distribution Policy applied by ERA for the purposes of proposing and (subject to required approvals) making distributions to ERA Members.

The approved Distribution Policy is published on the ERA website at [www.era.org](http://www.era.org)

Four Distributions were made to ERA Members during the year ended 31 March 2017<sup>18</sup>.

The total sums distributed were

£2,850,000 on 30 June 2016

£2,850,000 on 30 September 2016

£2,800,000 on 30 December 2016

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<sup>17</sup> Regulation 21 (4) (j) (vii)

<sup>18</sup> Regulation 21 (4) (j) (ii) and (iii)



£2,750,000 on 31 March 2017.

The total amount distributed to right holders during the year was £11,250,000.

## **10. Allocations to categories of right holders**

Each ERA Member mandates ERA to represent the repertoire described against the name of the Member in clause 2 of the Schedule of Terms within the ERA Licence.

Each ERA Member is included within a Category of ERA Membership set out in the Distribution Policy. The share of Net Revenue allocated to each Category of Membership is also published in the Distribution Policy.

The Categories of Membership and net revenue shares applied during the financial year ended 31 March 2017 were: -

**Categories of ERA Membership**  
**ERA Members within each Category of ERA Membership**  
**Percentage of Net revenue allocated to each Category of ERA**  
**Membership**

Category 1 (Net revenue percentage 37.98%)  
**Broadcasts**

BBC Worldwide Limited  
Channel 5 Broadcasting Limited  
Channel Four Television Company Limited  
The ITV Network Limited  
Sianel Pedwar Cymru  
Compact Collections Limited  
560 Media Rights Limited (from 10 March 2017)

Category 2 (Net revenue percentage 27.25%)

**Literary, Dramatic, Musical and Artistic works**

Authors' Licensing and Collecting Society Limited  
Design and Artists' Copyright Society  
Mechanical Copyright Protection Society Limited  
Performing Right Society Limited  
Directors UK Limited

Category 3 (Net revenue percentage 20.85%)  
**Performers**

Equity  
Musicians' Union  
Incorporated Society of Musicians

<u>Category 4</u> <b>Sound Recordings</b>	(Net revenue percentage	4.35%)
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BPI (British Recorded Music Industry) Limited  
Phonographic Performance Limited  
Radio Independents Group

<u>Category 5</u> <b>Films</b>	(Net revenue percentage	9.57 %)
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AGICOA  
FOCAL International Limited  
Open University Worldwide Limited

Total	100%
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560 Media Rights Limited became the agent for representation of Discovery Communications Europe Limited covering the rights relating to Discovery which were previously represented by Compact Collections Limited.

560 Media Rights Limited became a member of ERA from 10 March 2017. By agreement between ERA, Compact Collections Limited and 560 Media Rights Limited for the purposes of the distribution made by ERA in March 2017, the ERA mandate from 506 Media Rights Limited was deemed to have applied from 1 January 2017

## 11. Management Fees<sup>19</sup>

ERA's total costs for administering licences during the year ended 31 March 2017 were £735,495.

Further details are specified in the audited Financial Statements.

Shares of management fees allocated to individual Members were the same shares applied to entitlement for Net Revenue distributions. This reflects ERA's approved Policy on Deductions adopted and endorsed by all ERA Members.

## 12. Income arising from Investment of Rights Revenue<sup>20</sup>

Bank interest received by ERA from holding monies on behalf of ERA Members pending licence fees being earned and distribution authorised amounted to £52,159.

With the approval of ERA Members, the company used the interest payments earned to meet approved Management Fees, rather than allocating the monies as an identified separate part of the net revenue distributions authorised and made to ERA Members during the year.

## 13. Information on Relationships with other Collective Management Organisations<sup>21</sup>

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<sup>19</sup> Regulation 21 (4) (i)

<sup>20</sup> Regulation 21 (4) (i) (bb)

<sup>21</sup> Regulation 21 (4) (k)

ERA does not have in place any bilateral or representation agreements with any other collecting societies save to the extent that some ERA Members are themselves collective management organisations.

The following collective management organisations are Members of ERA in their own right: -

Authors' Licensing and Collecting Society Limited  
Design and Artists' Copyright Society  
Mechanical Copyright Protection Society Limited  
Performing Right Society Limited  
Directors UK Limited  
Phonographic Performance Limited  
AGICOA.

**The Educational Recording Agency Limited**  
**Company Number: 02423219**

**Registered Office: 1<sup>st</sup> Floor, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN**

**To be completed by each member of the Committee**

**Individual Statement for the year ending 31 March 2017**

To the Members of The Educational Recording Agency Limited ("ERA").

I

being a Director of ERA and an appointed delegate of the Board in providing the supervisory function of ERA

nominated by \_\_\_\_\_ (insert name of member)

hereby declare and confirm that:

1. I have no personal interest in ERA subject only to the interests declared in paragraph 4 below.
2. I have received no remuneration from ERA during the year.
3. I have received no monies from ERA as a right holder in my own right.
4. I confirm that I have declared to the ERA Board the following conflicts of interest, which have been noted and approved by the ERA Board, and that I have no other conflicts of interest to declare:

(List all the entries against the name of the individual from the Register of Interests)

Signed ..... Date.....