

The logo for the British Recorded Music Industry (BPI) consists of the letters 'BPI' in a white, serif font, centered within a solid black rectangular background.

The British Recorded Music Industry

# **Charts Code of Conduct for BPI Members**

**Effective from 1<sup>st</sup> January 2012**

# Charts Code of Conduct

## Introduction & Summary

All BPI Members must sign up to the Charts Code of Conduct. BPI recognises the importance to the industry and the general public of the Charts conveying a genuine picture of music consumption in the UK. The best way to achieve this is to ensure that all record companies in the UK abide by the same rules. By regulating its members' activities, BPI seeks to assist the preparation of Charts which accurately reflect the sale of records in the UK.

The Charts are commissioned from Millward Brown by The Official UK Charts Company Ltd ("Official Charts Company"), a joint venture between BPI and the Entertainment Retailers Association ("ERA"). ERA operates a similar code for its retailer members. BPI and Official Charts Company continue to work with other bodies involved in the sales of records to encourage the adoption of an equivalent Charts code of conduct among non-BPI members.

The Charts Code of Conduct is a formal document. Previous experience has illustrated the importance and benefits of setting out procedures to be adopted following an alleged breach of the Charts Code of Conduct, and the penalties that may follow.

The Charts Code of Conduct was given a substantial overhaul in 1992. It was revised in March 2001 and October 2002. This August 2011 edition has been amended to reflect current law and practice, and has been simplified for ease of use.

The Charts Code of Conduct is made up of two parts: the Code and the Covenant.

### 1. THE CODE

The Code provides that any conduct by a Code Signatory which is reasonably foreseeable as being capable of distorting the Charts (an objective test to be applied by a Committee of Enquiry) will constitute a breach of the Code. A definition of "distortion" is included.

Paragraphs 2.1 – 2.5 provide non-exhaustive examples of activities which BPI believes would lead to a distortion of the Charts, and would amount to a breach of the Code. The list is by way of illustration only and any activity which is reasonably foreseeable as being capable of distorting the Charts will be a breach of the Code.

Paragraph 3 sets out the powers of the Chart Administrator. Paragraphs 3.1 – 3.3 deal with the Chart Administrator's investigation and reporting obligations. Paragraph 3.4 permits the Chart Administrator to remove records from the Charts if there has been a breach of the Code. The current Chart Administrator is Official Charts Company, which sub-contracts some of its responsibilities to Millward Brown. Both fall within the definition of Chart Administrator.

Paragraph 4 deals with BPI's powers to investigate and prosecute alleged breaches of the Code and sets out the relevant procedures to be followed.

Paragraph 5 deals with the adjudication of any breach of the Code and the sanctions applicable.

The remaining Paragraphs deal with administrative matters such as notices, governing law and jurisdiction.

### 2. THE COVENANT

This is to be signed by each BPI member. Signing the Covenant places the BPI member under a legally binding obligation to abide by the terms of the Charts Code of Conduct.

Further to Paragraph (C) of the Covenant, the BPI member agrees to procure that all its employees and all third parties with whom it contracts (including production, marketing, promotion, distribution and selling services), all artists and label licensees (together the "Contracted Parties") must abide by the Code.

Under Paragraph (D) the BPI member must use its best endeavours to procure that all other third parties must abide by the Code. This includes all those connected with the production, marketing, promotion, distribution, sale or other exploitation of artists' records, including artists' management and promoters (together the "Connected Parties").

Paragraph (E) obliges the BPI member to put terms in all its contracts with Contracted Parties requiring those Contracted Parties to abide by the Code and indicates the scope of the obligations which BPI would expect to be included in these contracts.

Paragraph (F) obliges the BPI member to notify the contents of the Code to all Connected Parties and monitor their compliance.

# Part 1: The Code

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Charts Code of Conduct, the following terms shall have the meanings set against them below:

- 1.1.1 "Articles" means the Articles of Association of BPI, as amended from time-to-time;
- 1.1.2 "Artist" means any performer or contributor whose performance or contribution has been included on Records which have been or will be exploited by a Code Signatory;
- 1.1.3 "Charts" means those charts designated by Official Charts Company from time to time as the official United Kingdom charts determining the relative sales of Records within a prescribed period measured by any combination of physical sales, online sales, downloads, radio play, streaming or any other such method Official Charts Company chooses to use as altered from time-to-time;
- 1.1.4 "Chart Administrator" means the person engaged from time to time to compile, administer and generally to manage the charts or any of them including any sub-contractor of such person;
- 1.1.5 "Chart Objective" means the underlying object and purpose of the compilation of each of the Charts, namely the accurate reflection of the relative genuine and bona fide sales or consumption of such Records, as shall from time to time be deemed to be within the terms of reference of the relevant Chart, to members of the public, marketed and distributed in the normal course of business, individually and in their own right, without collateral benefits or inducement;
- 1.1.6 "Charts Code of Conduct" means the Code and the Covenant;
- 1.1.7 "Clear Days" means, in relation to a period of notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is to take effect;
- 1.1.8 "Code" means the rules of conduct and administration thereof contained in Part 1 of this Charts Code of Conduct;
- 1.1.9 "Code Signatory" means any person which has executed BPI member's Covenant;
- 1.1.10 "Committee of Enquiry" means such Committee of Enquiry as may be appointed by BPI from time to time in accordance with the Articles;
- 1.1.11 "Council" means the Council of BPI from time to time;
- 1.1.12 "Covenant" means the document to be signed by BPI members on joining BPI which forms Part 2 of this Charts Code of Conduct; and
- 1.1.13 "Records" means and includes all conventional types of musical sound recordings now in use (including without limitation vinyl, compact disc, MP3, WAV and all other digitally encoded formats) or unknown by which sounds may be recorded for later transmissions to listeners, whether in the immediate presence of a reproducing instrument or device or by internet, radio, television, cable, fixed or mobile telecommunications system, cinematic exhibition, personal computer, digital audio devices or any other medium and whether embodying sound alone or sound synchronised with visual images by film, video tape, digital moving or stationary image, or any electronic or any other device by which pictures and sound may be projected, played back or transmitted simultaneously including, without limitation, music video.

1.2 Headings in this Code are inserted for convenience only and shall not affect its interpretation in any way.

1.3 References to Paragraphs are to paragraphs of this Code unless otherwise expressly provided. References to the singular shall include the plural and vice versa. References to persons include natural persons, firms, partnerships, companies and associations (in each case whether or not having separate legal personality).

## 2. DISTORTING THE CHARTS

No action, omission or course of conduct is permitted or knowingly allowed to be undertaken if it is reasonably foreseeable that the Charts will or are likely to be distorted so as to render any Record in a higher or lower relative position than if the Chart had been compiled in accordance with the Chart Objective. By way of illustration only and without prejudice to the generality of the foregoing the following shall constitute actions, omissions or conduct which are deemed reasonably foreseeable to distort the Charts (or any of them) for the purposes of this Paragraph 2:

- 2.1 promoting the sale of any Artist's Record by supplying a dealer with records by another Artist free of charge or upon terms more favourable than would be the case but for that promotion;
- 2.2 purchasing Records or causing Records to be purchased other than as a genuine consumer purchase;
- 2.3 interference with the operation of datapoint machines or other equipment or computer software used to compile the Charts or collect or collate its information or in any other way being a party to the submission of false or inaccurate data to the Chart Administrator;
- 2.4 offering money or other benefits to a dealer, wholesaler or retailer contingent upon a Record entering any of the Charts or attaining a minimum Chart position; and/or
- 2.5 enabling or offering for sale an Artist's Record in conjunction with a gift which gives the consumer a product, voucher or benefit or anything else which is either:
  - 2.5.1 unrelated to the Artist or Record concerned; or
  - 2.5.2 of a value in excess of the value of the Record without the gift (even if the product, voucher or benefit is related to the Artist).

### **3. CHART ADMINISTRATOR'S POWERS**

Each Code Signatory hereby acknowledges and agrees that BPI is entitled to grant and may grant to the Chart Administrator the rights and obligations:

- 3.1 to take all necessary steps to ensure the accuracy and validity of the data it collects in respect of its compilation of the Charts (or any of them) including but not limited to the imposition of obligations upon retailers of Records, with respect to their collection and submission to the Chart Administrator of such data and further to investigate the returns made by such retail outlets, the sale of Records by which are monitored by the Chart Administrator for such compilation;
- 3.2 to investigate any prima facie substantial reports of alleged contravention of the Charts Code of Conduct;
- 3.3 to report any contravention of the Charts Code of Conduct identified by it to BPI; and
- 3.4 subject to prior notification by the Chart Administrator or BPI in respect thereof, to take such action with a view to avoiding, rectifying or minimising any distortion of the Charts (or any of them) as is occasioned by the breach of the Charts Code of Conduct, by attempting to or succeeding in omitting the relevant Record(s) from any Chart or by adjusting its/their position on the relevant Chart(s) IT BEING EXPRESSLY PROVIDED THAT each Code Signatory hereby acknowledges that it is not vested with any contractual remedy against either BPI or the Chart Administrator in respect of such conduct and further acknowledges that it shall commence no action in tort against the Chart Administrator in respect of such conduct without first having notified BPI of its intention to do so and further without entering into bona fide consultations with BPI as to its rights of action prior to commencing any such proceedings.

### **4. BPI'S POWERS TO INVESTIGATE AND PROSECUTE ALLEGED BREACHES OF THE CHARTS CODE OF CONDUCT**

- 4.1 BPI is hereby empowered and obliged to receive any complaints, whether from the Chart Administrator, any BPI member, any retailer of Records, any member of the public or any other person in respect of an alleged breach of the Charts Code of Conduct.
- 4.2 Upon receipt of any complaint as provided for pursuant to Paragraph 4.1, BPI is hereby empowered to require:
  - 4.2.1 the delivery by the complainant of formal written details of the complaint; and/or
  - 4.2.2 a payment by the complainant towards BPI's administration expenses of investigation of the complaint,
 as conditions precedent to convening a meeting of the Council to consider any complaint notified to BPI.
- 4.3 The Council is hereby empowered:
  - 4.3.1 to investigate any alleged breach of the Charts Code of Conduct referred to it by BPI;
  - 4.3.2 to prosecute such investigation as provided for pursuant to the remainder of this Paragraph 4;
  - 4.3.3 to adjudicate and declare whether any such breach has occurred;

- 4.3.4 to make a ruling which shall be final and binding upon the relevant Code Signatory requiring immediate cessation of any adjudicated and declared breach of the Charts Code of Conduct;
- 4.3.5 to impose such sanctions and penalties upon the relevant Code Signatory as it shall see fit and is empowered to impose pursuant to Paragraph 5 which each Code Signatory hereby acknowledges and agrees shall be binding upon it; and
- 4.3.6 to set reasonable time limits for the response by the relevant Code Signatory to any enquiry, request for information, request for submission of documentation or any other cooperation it may require from the same in connection with such investigation, the Code Signatory's failure to observe the same entitling the Committee of Enquiry to find, on the evidence available, that a breach of the Charts Code of Conduct has occurred.

PROVIDED THAT it may delegate (except for the power to expel or to suspend any BPI member from BPI) its powers pursuant to Paragraph 4.3 to a Committee of Enquiry appointed in accordance with Article 80 of the Articles.

4.4 Each Code Signatory hereby irrevocably agrees to cooperate fully with any investigation of an alleged breach of the Charts Code of Conduct, such cooperation to include without limitation:

- 4.4.1 attending such meetings and hearings as the Committee of Enquiry may on not less than ten (10) Clear Days prior notice convene and there to be represented by its BPI representatives (as provided for pursuant to Article 11 of the Articles) or any suitably senior alternative representatives; and
- 4.4.2 responding accurately, promptly and fully to all correspondence issued by the Committee of Enquiry in connection with its investigation; and
- 4.4.3 supplying to the Committee of Enquiry on demand all such documents, data, correspondence and all other written information as shall relate to the matters that are the subject of the investigation; and
- 4.4.4 permitting the authorised Committee of Enquiry to inspect all accounts, books, records, invoices, receipts and all other documentation in the possession and/or control of the Code Signatory and to take copies of the same insofar as these may be found to be relevant to the Committee of Enquiry's investigation at the Code Signatory's principal place of business during normal business hours on at least seventy-two (72) hours prior written notice or such shorter period as may be agreed between the Committee of Enquiry and the relevant Code Signatory.

4.5 Each Code Signatory hereby expressly acknowledges and agrees that, in the event that the Committee of Enquiry is satisfied on the balance of probability that the alleged breach of the Charts Code of Conduct is established, the Committee of Enquiry may in its absolute discretion (notwithstanding any failure by the relevant Code Signatory to discharge its obligations pursuant to Paragraph 4.4) make a finding that the Charts Code of Conduct has been breached PROVIDED ALWAYS THAT the Code Signatory which is the subject of any investigation of an alleged breach shall have been notified of the complaint made against it, the Committee of Enquiry's investigation of it and further shall have been afforded the opportunity to adduce evidence to rebut the allegation of the breach.

4.6 The Committee of Enquiry may regulate its proceedings as it thinks fit.

## **5. ADJUDICATION OF ANY BREACH OF THE CHARTS CODE OF CONDUCT AND SANCTIONS APPLICABLE**

5.1 Upon conclusion of any investigation the Committee of Enquiry shall determine whether any breach of the Charts Code of Conduct has occurred and shall issue a written judgment embodying the same which it shall notify to the relevant Code Signatory and which it is hereby expressly empowered, not earlier than 14 days thereafter, to issue to all BPI members and to the public (in the case of the latter in the form of a press release or otherwise).

5.2 The Committee of Enquiry is hereby empowered to impose upon a Code Signatory, in respect of any breach of the Charts Code of Conduct that it determines has occurred, any one or more of the sanctions and penalties provided for below, in any combination, or, in the case of those sanctions set out in Paragraphs 5.2.4 and 5.2.5, to recommend the imposition of the same by the Council:

- 5.2.1 the issue to the relevant Code Signatory of an official notice or censure (in the case of the latter in the form of a press release or otherwise);
- 5.2.2 the delivery to all BPI members and/or issue to the public of a copy of any official notice or censure (in the case of the latter in the form of a press release or otherwise);
- 5.2.3 a fine;
- 5.2.4 suspension from BPI;

- 5.2.5 termination of BPI membership; and/or
- 5.2.6 any other penalty, sanction or direction to a relevant Code Signatory (including without limitation a direction to the Code Signatory to sanction on any Contracted Party and/or to prescribe dealings with any Connected Party, as defined in the BPI Member's Covenant) deemed by the Committee of Enquiry in its sole discretion to be applicable and equitable on the facts of the particular breach.

5.3 In the event that the Committee of Enquiry recommends the imposition of either of those sanctions set out at Paragraphs 5.2.4 and 5.2.5 above (the "Recommendation"):

- 5.3.1 Council shall, at its next meeting, review, and consider whether to implement, the Recommendation;
- 5.3.2 subject to Paragraph 5.3.4 below, Council may resolve at the meeting to implement or reject the Recommendation or to implement such variation of the Recommendation as Council, in its sole discretion, deems fit;
- 5.3.3 Council's rejection of the Recommendation shall not prejudice the Committee of Enquiry's authority to impose any additional or alternative sanction or penalty on the relevant Code Signatory in accordance with Paragraph 5.2 above;
- 5.3.4 no resolution of the Council suspending or terminating the membership of any Code Signatory shall take effect unless at least three quarters of the members of the Council present and voting at the meeting of the Council duly convened for the purpose of considering the Recommendation shall have voted in favour of it;
- 5.3.5 where Council implements a Recommendation to suspend a Code Signatory from BPI, such suspension shall take effect on service of notice upon the relevant Code Signatory, or in the event of such Code Signatory being a partnership, firm or corporation, service upon the representative of that partnership, firm or corporation; and
- 5.3.6 Where Council implements a Recommendation to terminate a Code Signatory's membership, such Code Signatory shall cease to be a member of BPI and its membership shall be terminated on and from the service upon him of notice in writing, or in the event of such Code Signatory being a partnership, firm or corporation, service upon the representative of that partnership, firm or corporation.

## **6. GOVERNING LAW AND JURISDICTION**

The Charts Code of Conduct shall be governed by the laws of England and Wales and each Code Signatory acknowledges that BPI is vested with the exclusive jurisdiction to administer the Charts Code of Conduct and to investigate, adjudicate and impose sanctions in respect of the Charts Code of Conduct and agrees to submit to the same.

## **7. NOTICES**

Any notice required to be given hereunder shall be in writing and shall be served by sending the same by pre-paid first class post or facsimile or email or by delivering the same by hand to the then current address of the addressee which in the case of the Code Signatory shall be the last address notified by it to BPI. Any notice sent by post as provided for pursuant to this Paragraph shall be deemed to have been served two working days after despatch and any notice sent by facsimile or email as provided for in this Paragraph shall be deemed to have been served at the time of despatch. In proving the service of the same it will be sufficient to prove in the case of a letter that such letter was properly stamped addressed and placed in the post and in the case of facsimile or email that such facsimile or email was duly despatched to the then current fax number or email address of the addressee. Any notice sent by hand shall be deemed to have been served on delivery.

## **8. MISCELLANEOUS**

- 8.1 No failure or delay by either BPI or any Code Signatory to exercise any right or remedy vested in it pursuant to the Charts Code of Conduct shall constitute a waiver by either of them of that right or remedy.
- 8.2 In the event that any provision of the Charts Code of Conduct shall be declared unlawful or unenforceable by a court of competent jurisdiction the remainder shall remain in full force and effect and amended as required to be effective.
- 8.3 This Charts Code of Conduct replaces and supersedes all previous Charts Codes of Conduct or any other codes, agreements and arrangements relating to the subject matter of these documents.

## Part 2: The Covenant

We, ....., being a member of the BPI (British Recorded Music Industry) Limited ("BPI") in consideration of the sum of £1 (receipt of which is hereby acknowledged), and the benefits of collective public adherence to good business practice contained in this Charts Code of Conduct and other good and valuable consideration HEREBY AGREE from the date of our signature below and for so long as we remain such a member:

- (A) to abide by the terms of the Charts Code of Conduct as may be amended or replaced from time to time pursuant to and in accordance with the Articles as amended from time to time;
- (B) to irrevocably submit to the exclusive jurisdiction of BPI to administer this Charts Code of Conduct, including to investigate alleged breaches thereof, to reach decisions binding upon us as to the existence of any actual breach thereof and to make decisions binding upon us as to the sanctions and penalties applicable to a breach thereof. Further we hereby expressly confirm our agreement to each of the obligations imposed upon and the acknowledgements made by each Code Signatory pursuant to the Charts Code of Conduct;
- (C) to procure that (a) all of our employees, and (b) all persons supplying services or granting rights to us in connection with the marketing and sale of Records or granted rights by us to produce, market, promote, distribute, sell or otherwise to exploit Records or otherwise acting on our behalf including but not limited to any Artist, any third party publicity or promotion agency and any label licensee ("the Contracted Parties") abide by the Code;
- (D) to use our best endeavours to procure that all persons (not being Contracted Parties) in any way connected with the production, marketing, promotion, distribution, sale or any other exploitation of our products ("the Connected Parties") including but not limited to Artists' management and promoters of public appearances by Artists abide by the Code;
- (E) without prejudice to the generality of our obligations pursuant to paragraph (C) above, to impose a legally valid enforceable and effective obligation upon all Contracted Parties to abide by the Code and further to vest in ourselves the legally valid, enforceable and effective right to sanction any Contracted Party in respect of any failure to discharge such obligation including the right in the case of employees to terminate their employment, and in the case of any other person to terminate the contract or other arrangement pursuant to which it is engaged appointed or licensed by us and further to enforce such obligations and to exercise such rights of sanction; and
- (F) without prejudice to the generality of our obligations pursuant to paragraph (D), to disclose to all Connected Parties the Code and to monitor the conduct of the Connected Parties with regard to the matters governed by the Code.

Signed:

Name (please print):

Position in Company:

Duly authorised for and on behalf of (name of company):

Date: