

**TG4 Scheme pursuant to Section 111(4) of the Broadcasting Act 2009 for the licensing of the use and exploitation by third parties of television recordings over which TG4 holds copyright and related rights**

**15<sup>th</sup> June 2017**

## **Introduction**

This Scheme is for the licensing by TG4 of the use and exploitation by third parties of television recordings over which TG4 holds copyright and related rights.

References in this document to 'archive' means television recordings over which TG4 holds copyright and related rights that have been broadcast by TG4 television service.

Any archive material which is wholly owned by TG4 is covered by this Scheme. In addition, where TG4 owns copyright in a programme, but not in all constituent elements of the programme (e.g. third party archive), TG4 will deal with the request for use under the terms of this Scheme. Similarly where TG4 does not own copyright in a programme but retains the right to sell or make the programme available pursuant to this Scheme, TG4 will deal with the request for use under the terms of this Scheme. This will be subject to the additional caveat that, to the extent the proposed usage/exploitation requires the consent/agreement of third party rights-owners as well as TG4, then TG4 will require written confirmation that such have been obtained or in the event that written consent is not possible, as in the case of an "orphan work", TG4 will assess its ability to licence the material on the advice of its legal department.

## **General Policy Regarding the Operation of the Scheme**

In the operation of this Archive Scheme TG4 recognises the requirement for transparency in its decision making processes.

TG4 general policy on archive requests made pursuant to this Scheme is addressed under the following headings:

- a) Access to TG4 archive ("Cartlann TG4") and the process by which Cartlann TG4 assesses requests for programme material.
- b) Principles on which the Cartlann TG4 charges are set for the licensing of the use and exploitation by third parties of television recordings.

TG4 will make all reasonable efforts to facilitate requests for archive in a timely and efficient manner.

## **Access to Cartlann TG4 and the Process by which Cartlann TG4 Assesses Requests for Archive Material**

1. TG4 receives request from requester either through the TG4 website application form or by phone/e-mail.
2. Request is assigned to member of the Cartlann TG4 team who seeks further information about the intended use and licence requested and considers whether request is compliant with professional use guidelines.
3. Cartlann TG4 advises requester of fees levels involved. Advance payment will be required.
4. Research is carried out to select/identify material, and into the rights TG4 has over the material.
5. The technical (preservation) status of material is assessed for usability/whether suitable for duplication/use.
6. An indicative timeframe for a decision on the request will be given to the requester.
7. TG4 will check this against an advance list of programmes/projects where a holdback has been placed on the material.
8. In exceptional circumstances TG4 reserves the right to withhold material.
9. If there are no holdback or legal issues then TG4 will proceed to make arrangements for the licence and supply of material.
10. If there is a holdback, requester will be notified as to the basis of the holdback and regularly updated as to duration.

## **Principles upon which Cartlann TG4 Charges are set for the Licensing of the Use and Exploitation by Third Parties of Television Recordings**

Cartlann TG4 fees are set by reference to guiding principles and circumstances in which the pricing structure may vary or be revised.

- a) Guiding principles and
- b) Circumstances in which the pricing structure may vary or be revised.

Technical charges: These charges include research, viewing and transfers. The Rate Card is based on the average costs of supplying the material to the client at the point of sale. The review of costs is also based upon this principle. Where TG4 incurs extra and substantial technical costs in making the archive material available, the licence fee would incorporate this cost.

### **a) Guiding Principles for licensing fees of archive material**

The rates in the industry for licensing fees of archive material are market led, and based on the following principles:

- (a) The potential size of the audience
- (b) The amount and nature of archive material used. The business operates on the basis of a minute minimum as the unit rate. Volume discounts may be offered in the industry and some audiovisual archive material may attract a premium.
- (c) The licence fee charged is linked to the commercial activity involved in a project e.g. a revenue share project such as DVD/Fee paying exhibition.

### **b) Circumstances in Which the Pricing Structure May Vary or be Revised**

Charges (which include research costs, legal rights search costs, duplication costs and licence fees) will be levied by TG4 in accordance with published rate cards (see [www.TG4.ie](http://www.TG4.ie)), which are subject to change by TG4 from time to time.

The final charge in each case depends on the nature of the request, the work involved in dealing with the request, the rights/clearance requested, the preservation status of the archive requested, and on the duration of the archive material to be used.

### **Timeframes**

While every reasonable effort is made to fulfil requests in the shortest period of time, the turnaround period for handling of requests is dependent on a variety of factors such as, type and volume of material, the legal complexities, resource limitations and other broadcast or business priorities. TG4 will indicate specific timeframes in response to every request received for archive material, bearing in mind that depending on the nature of the inquiry the response times will vary accordingly.

For a general indication of timelines see Appendix 1.

### **Dispute Procedure**

In the event of a dispute arising with a requester in respect of the operation of the Scheme, Cartlann TG4 will engage with the applicant to seek to resolve the dispute. If this is unsatisfactory to the applicant, they may register their complaint with TG4 for adjudication within 28 days. The TG4 Rate Card is not subject to review under the dispute resolution procedure.

A suitably qualified independent expert in the audiovisual sector with experience of handling complaints between members of the public and public bodies will act as final adjudicator in the event

that a dispute is still unresolved. This expert will be selected by the complainant from a panel of such experts proposed by TG4 and will advise both TG4 and the complainant of their final adjudication.

For the avoidance of doubt, in the case of any unauthorised use (including any threatened unauthorised use) by any person of any archive material, nothing in this section will preclude TG4 from exercising any legal right and remedy (including without limitation injunctive relief) that may be available to TG4 in respect of such unauthorised use.

## **Confidentiality Issues Arising from Disclosure and Refusal/Holdback Provisions of the Proposed Scheme**

### **Confidentiality**

The following safeguards apply under this Scheme to ensure confidentiality between the requester and TG4:

- (a) Information of a confidential nature provided by requesters about the intended use by the requester of the archive material sought is confined to the Carlann TG4 management. TG4 editorial teams are not consulted by the Carlann TG4 team about confidential third party information or intended use. The information supplied by the requester is necessary to assist TG4 in the licensing decisions process. The information is checked against any advance notifications of material on which a holdback has been placed. Therefore editorial teams are not consulted by TG4 about the third party context or intended use. The requester will be notified as to the reason for refusal at a general level without disclosing TG4 confidential information to the requester.
- (b) TG4 may consult with TG4's legal department to assist in its determination on legal issues relating to rights/content around the material requested.

### **Disclosure of Information When Making a Request**

Full disclosure of context and intended use of the requested archive material must be given to TG4 in advance of supply. Where the search criteria and details provided by the requester to TG4 are inadequate, TG4 will request further information from the requester, but it may be that TG4 will be unable to complete the requested order if sufficient detail is not provided. The making of a request does not guarantee delivery of archive materials.

In the case of requests for archive material for educational and research purposes, TG4 may require third party confirmation that the request is for *bona fide* educational and research purposes and is non-commercial. TG4 is available to advise and make recommendations on the method of publishing TG4 for educational purposes.

### **Refusal/Holdback**

TG4 general policy is to facilitate archive requests made under this Scheme subject to the following constraints:

TG4 reserves the right to withhold access to archive:

- (a) for legal reasons e.g. where there are existing or threatened legal proceedings relating to that archive and/or where the proposed use could be defamatory and/or could breach any law or regulation or broadcasting code and/or could breach any moral right, performer right or right of privacy, and/or it is not clear that TG4 holds copyright and related rights in the specific archive being requested.
- (b) for editorial integrity and taste and decency reasons e.g. the use would be of a nature that could bring the archive and/or TG4 into disrepute; and/or compromise the editorial integrity of the archive, and/or TG4; and/or potentially cause offence, hurt or danger to any person or body.

- (c) the requester has breached any previous licence agreement between the requester and TG4 relating to programme material (whether pursuant to this Scheme or otherwise).
- (d) the preservation state or status of the relevant physical material is such that it is not usable or suitable for duplication/use.

Bearing in mind that TG4 is the guardian and source of Cartlann TG4, it reserves the right to refuse requests for large or bulk amounts of archive material on a case by case basis, if the request requires excessive resources; compromises access and use of the archive by others; fails to ensure compliance with best international archival management standards and practice; or in the opinion of TG4 is detrimental to the integrity of the archive.

**In Respect of a Television Archive Request, a Holdback may be Applied to an Extract, Whole Programme or Series of Programmes or Extracts as Follows Where:**

1. TG4 requires an exclusive window for TG4's own purposes e.g. TG4 intends to use that specific archive in an upcoming TG4 production or project (including TG4 archive projects).
2. Archive material is of premium value i.e. is rare/ unique/recently discovered/ never before seen or not seen since first transmitted and is therefore reserved for TG4's first use as part of a planned project or preservation project, and the archive material would lose value if licensed to a third party in advance of TG4's own use or where TG4 needs time to respond to a major development or an event of national significance.
3. Archive material has or is the subject of significant investment of resources by TG4.
4. TG4 has already licensed that specific archive material for use by another party on the basis of that party having an exclusive use window.
5. The current preservation state or status of the relevant physical material is such that it is not currently usable or suitable for duplication/use.

**Holdback Timeframes**

1. Requester will be notified as to the general basis of the holdback.
2. A holdback, of up to 18 months, may be put in place by TG4 in advance of a TG4 project. An extension will only be agreed where the required criteria has been presented to Cartlann TG4.
3. A list of holdbacks and review dates will be maintained by TG4.
4. TG4 will place a restriction on the relevant archive records where appropriate.
5. Holdbacks will have a specific end date (subject to broadcast schedule changes). The holdback will be reviewed by TG4 before end date and on a regular basis.
6. Holdback status will be reviewed upon request.

**Terms and Conditions of Licensing Archive Material**

TG4 has further terms and conditions of licensing (see Appendix 2) for

- (a) licensing for commercial purposes
- (b) non-commercial *bona fide* educational and research purposes

These terms and conditions form the basis for the licence agreements for each category of archive user, as follows:

- Cartlann TG4 General Terms and Conditions of licensing for commercial purposes.
- Cartlann TG4 General Terms and Conditions of licensing for non-commercial *bona fide* educational and research purposes.
- Cartlann TG4 General Terms and Conditions of licensing for other purposes will be provided on a case by case basis in accordance with the Scheme and a licence agreement will be created based on either the commercial or non-commercial licence with such amendments as TG4 deems appropriate.

TG4 may review and update these terms and conditions from time to time as appropriate.

### **Review of the Scheme**

TG4 commits to review this Scheme every three years, or at such periods as may be required by the Minister for Communications, Energy and Natural Resources.

*submitted by TG4, 15<sup>th</sup> June 2017.*

## Appendix 1

### TG4 Transfer Services Turnaround Period

Indicative timelines for television archive content given below is as per 2017 technical facilities, formats, resources and transfer services available and is also subject to the following consideration on a case by case basis:

1. Duration of footage requested
2. Number of clips and complexity of sources involved
3. Availability of resources and existing workload
4. Live broadcast schedules requirements at any given time
5. Preservation status of materials requested
6. Holdbacks/legal restrictions or embargos

#### **Television Archive Services**

Source Tape	Storage	Transfer Speed	Turnaround Time (Estimate)
Contemporary Digital formats	On site Archive	Real Time	24 - 72 hours (up to 1 hour of footage)
Legacy analogue formats	Off site Deep Archive	Real Time	Minimum 5 days

\*Where complex legal or rights related issues arise in the research process for supply of any archive requested, TG4 will endeavour to process the request as quickly as possible and advise clients accordingly. Timelines for such requests in general can take from between 7 – 21 days. This may include, discovery of rights documentation, seeking legal advice, establishing rights holders, any necessary communication to third parties etc. This can only be given as an indicative timeline.

## **Appendix 2**

### **Cartlann TG4 General Terms and Conditions**

For the licensing of television recordings over which TG4 holds copyright and related rights (“archive”)

#### **For Commercial Purposes**

##### **Requests**

1. Full disclosure of context and intended use of the requested archive material must be given to TG4 in advance of supply.
2. Where search criteria for archive requested is vague or unclear, TG4 will request further information from the requester but it may be that TG4 will be unable to complete the requested order, if sufficient detail is not provided.
3. The making of a request does not guarantee delivery of archive materials.

##### **Usage**

4. Archive is supplied for the purposes of the disclosed and authorised use only for the specified licence period only.
5. Charges (which include research costs, legal rights search costs, duplication costs and licence fees) will be levied by TG4 in accordance with its published rate cards (see [www.TG4.ie](http://www.TG4.ie)), which are subject to change by TG4 from time to time. The final total charge in each case depends on the nature of the request, the work involved in dealing with the request, the rights/clearance requested, the preservation status of the archive requested and the duration of the archive to be used.
6. All research costs, legal rights search costs, duplication costs, shipping costs and minimum licence fees are payable in advance of supply of any archive. Licence fees, as described in paragraph 7 below, are determined once a usage declaration is received by TG4. The minimum non-refundable licence fee will be deducted from the final licence fee payable.
7. Licence fees for usage of archive are charged according to the duration of archive used on receipt of a usage declaration. If no usage declaration is received within 30 days (or such other period as agreed by TG4) from the date of supply, licence fees are payable on the total duration of archive supplied.
8. Archive is generally provided on a strictly non-exclusive basis for use in one specified work or series of works only. A licence agreement based on these terms will be entered into prior to usage of the archive by the licensee. In the case of productions TG4 may specify a limited number of transmissions and repeats in the terms of the licence granted. No licence will be granted (and no licence agreement issued) prior to receipt of payment of all charges in advance.
9. Archive must not be used or edited or altered in a way which compromises the integrity of the archive, brings TG4 into disrepute and/or which is defamatory of any person or is offensive or which may breach any law, regulation or broadcasting code (if applicable).
10. TG4 must be supplied with a viewing copy of the final version of the work in which archive is used upon request.
11. No right granted to a person by TG4 in respect of archive can be assigned or transferred to any third party without the prior written permission of TG4.
12. A TG4 credit will be included in such form as may be specified by TG4 in all versions of the work in which the archive is used. In respect of archive licensed for online use TG4 may also require that a reference is included in the work to the TG4 web portal.

## **Restrictions**

13. TG4 reserves the right to withhold access to archive for the following reasons:
  - (a) for legal reasons e.g. where there are existing or threatened legal proceedings relating to that archive and/or where the proposed use could be defamatory and/or could breach any law or regulation or broadcasting code and/or could breach any moral right, performer right or right of privacy, and/or it is not clear that TG4 holds copyright and related rights in the specific archive being requested.
  - (b) for editorial integrity and taste and decency reasons e.g. the use would be of a nature that could bring the archive and/or TG4 into disrepute and/or compromise the editorial integrity of the archive and/or TG4, and/or potentially cause offence, hurt or danger to any person or body.
  - (c) where the requester has breached any previous licence agreement between the requester and TG4 relating to programme material (whether pursuant to this Scheme or otherwise).
  - (d) the preservation state or status of the relevant physical material is such that it is not usable or suitable for duplication/use.
14. Bearing in mind that TG4 is the guardian and source of the TG4 archive, TG4 reserves the right to refuse requests for large or bulk amounts of archive on a case by case basis, if the request requires excessive resources; compromises access and use of the archive by others; fails to ensure compliance with best international archival management standards and practice; or in the opinion of TG4 is detrimental to the integrity of the archive or in conflict with TG4's commercial interests.
15. TG4 reserves the right to provide access to archive subject to a holdback/delay where:
  - (a) TG4 requires an exclusive window for TG4's own purposes e.g. TG4 intends to use that specific archive in an upcoming TG4 production or project (including TG4 archive projects)
  - (b) TG4 has already licensed that specific archive for use by another party on the basis of that party having an exclusive window
  - (c) The current preservation state or status of the relevant physical material is such that it is not currently usable or suitable for duplication/use.

## **Disputes**

16. In the event of a dispute arising with a requester in respect of the operation of the Scheme, Carllann TG4 will engage with the applicant to seek to resolve the dispute. If this is unsatisfactory to the applicant, they may register their complaint with Carllann TG4 Management for adjudication within 28 days. The TG4 Rate Card is not subject to review under the dispute resolution procedure.
17. A suitably qualified independent expert in the audiovisual sector with experience of handling complaints between members of the public and public bodies will act as final adjudicator in the event that a dispute is still unresolved. This expert will be selected by the complainant from a panel of such experts proposed by TG4 and will advise both TG4 and the complainant of their final adjudication.
18. In the case of any unauthorised use of archive (including any threatened unauthorised use) by any person of any archive, TG4 can terminate a licence with immediate effect. TG4 reserves the right to exercise any legal right and remedy (including without limitation injunctive relief) that may be available to TG4 in respect of such breach.

## **Return of Material**

19. Archive material, together with all copies thereof, shall be returned to TG4 or destroyed/deleted by the client (with a certificate of destruction/deletion to be provided to TG4) as per the licence agreement issued, and in any event upon termination or expiry of the relevant licence period.

## Cartlann TG4 General Terms and Conditions

For the licensing of television recordings over which TG4 holds copyright and related rights (“archive”)

### For Non-Commercial Bona Fide Educational and Research Purposes

#### Requests

1. Full disclosure of context and intended use of the requested archive must be given to TG4 in advance of supply.
2. In the case of requests for archive for educational and research purposes, TG4 may require to be provided with third party confirmation that the request is for *bona fide* educational and research purposes and is non-commercial.
3. Where search criteria for archive requested is vague or unclear, TG4 will request further information from the requester but it may be that TG4 will be unable to complete the requested order if sufficient detail is not provided.
4. The making of a request does not guarantee delivery of archive materials.

#### Usage

5. Archive is supplied for the purposes of the disclosed and authorised use only for the specified licence period only.
6. Charges (which include research costs, legal rights search costs, duplication costs and licence fees) will be levied by TG4 in accordance with its published rate card (see [www.TG4.ie](http://www.TG4.ie)), which are subject to change by TG4 from time to time. The final total charge in each case depends on the nature of the request, the work involved in dealing with the request, the rights/clearance requested, the preservation status of the archive requested and the duration of the archive to be used. TG4 may in its discretion elect to waive licence fees (however other charges, i.e. research costs etc may still apply).
7. All research costs, legal rights search costs, duplication costs, shipping costs and minimum licence fees are payable in advance of supply of any archive. Licence fees as described in paragraph 8 below, are determined once a usage declaration is received by TG4. The minimum non-refundable licence fee will be deducted from the final licence fee payable.
8. Licence fees for usage of archive are charged according to the duration of archive used on receipt of a usage declaration. If no usage declaration is received within 30 days (or such other period as agreed by TG4) from the date of supply, licence fees are payable on the total duration of archive supplied.
9. Archive is generally provided on a strictly non-exclusive basis for use in one specified work or series of works only. A licence agreement based on these terms will be entered into prior to usage of the archive by the licensee. No licence will be granted (and no licence agreement issued) prior to receipt of payment of all charges in advance.
10. Archive must not be used or edited or altered in a way which compromises the integrity of the archive, brings TG4 into disrepute and/or which is defamatory of any person or is offensive or which may breach any law, regulation or broadcasting code (if applicable).
11. TG4 must be supplied with a viewing copy of the final version of the work in which archive is used upon request.
12. No right granted to a person by TG4 in respect of archive can be assigned or transferred to any third party without the prior written permission of TG4.
13. A TG4 credit will be included in such form as may be specified by TG4 in all versions of the work in which the archive is used. In respect of archive licensed for online use TG4 may also require that a reference is included in the work to the TG4 web portal.

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- breach any law or regulation or broadcasting code and/or could breach any moral right, performer right or right of privacy, and/or it is not clear that TG4 holds copyright and related rights in the specific archive being requested.
- (b) for editorial integrity and taste and decency reasons e.g. the use would be of a nature that could bring the archive and/or TG4 into disrepute and/or compromise the editorial integrity of the archive and/or TG4, and/or potentially cause offence, hurt or danger to any person or body.
  - (c) where the requester has breached any previous licence agreement between the requester and TG4 relating to programme material (whether pursuant to this Scheme or otherwise).
  - (d) the preservation state or status of the relevant physical material is such that it is not usable or suitable for duplication/use.
15. Bearing in mind that TG4 is the guardian and source of the TG4 archive, TG4 reserves the right to refuse requests for large or bulk amounts of archive on a case by case basis, if the request requires excessive resources; compromises access and use of the archive by others; fails to ensure compliance with best international archival management standards and practice; or in the opinion of TG4 is detrimental to the integrity of the archive or in conflict with TG4's commercial interests.
16. TG4 reserves the right to provide access to archive subject to a holdback/delay where:
- (d) TG4 requires an exclusive window for TG4's own purposes e.g. TG4 intends to use that specific archive in an upcoming TG4 production or project (including TG4 archive projects).
  - (e) TG4 has already licensed that specific archive for use by another party on the basis of that party having an exclusive window.
  - (f) The current preservation state or status of the relevant physical material is such that it is not currently usable or suitable for duplication/use.

## **Disputes**

17. In the event of a dispute arising with a requester in respect of the operation of the Scheme, Carllann TG4 will engage with the applicant to seek to resolve the dispute. If this is unsatisfactory to the applicant, they may register their complaint with Carllann TG4 Management for adjudication within 28 days. The TG4 Rate Card is not subject to review under the dispute resolution procedure.
18. A suitably qualified independent expert in the audiovisual TG4 sector with experience of handling complaints between members of the public and public bodies will act as final adjudicator in the event that a dispute is still unresolved. This expert will be selected by the complainant from a panel of such experts proposed by TG4 and will advise both TG4 and the complainant of their final adjudication.
19. In the case of any unauthorised use of archive (including any threatened unauthorised use) by any person of any archive, TG4 can terminate a licence with immediate effect. TG4 reserves the right to exercise any legal right and remedy (including without limitation injunctive relief) that may be available to TG4 in respect of such breach.

## **Return of Material**

Archive material, together with all copies thereof, shall be returned to TG4 or destroyed/deleted by the client (with a certificate of destruction/deletion to be provided to TG4) as per the licence agreement issued, and in any event upon termination or expiry of the relevant licence period