

Music Publishing 101

Publishing can be lucrative for musicians who write their own songs. Such artists own the copyright in the lyrics and music they write and publishing money (a.k.a. royalties) can be earned by the copyright owner of the songs. [Note: Publishing does not come from the copyright ownership in a sound recording, just copyright ownership in lyrics and music.]

The copyright owner of a song is entitled to certain exclusive rights in the song under the U.S. Copyright Act. Therefore, only the copyright owner of a song can use the song unless someone pays him to use it. When a copyright owner allows someone else to use his music, the owner is really granting a license in the copyright. A license is a legal agreement between two or more parties that allows one party to use something that another party owns, but does not transfer ownership from one party to the other. The money from these licenses is called publishing.

Publishers - Before we talk about the sources of publishing income, we should probably discuss publishers. It can be very difficult to keep track of how much money you may be owed from your publishing, and many songwriters hire a publisher for this very reason. A publisher's job is to find users for your music, issue licenses to such users, collect all of your publishing money, and pay you...also known as "administering" your copyrights. They will also have a better idea of the going rate for the various licenses you will want to grant (for example, how much would you charge for someone to use your song in a commercial?). The standard (although not only) arrangement for most publishers is to keep half of your publishing money as the fee for their services. When a songwriter signs a publishing agreement, the writer will actually sign over (assign) the copyright to the publishing company in exchange for half of the publishing revenues generated. The reason for this is because the Copyright Act requires the copyright owner to sue to enforce a copyright, so you pay the publisher to enforce your copyrights.

While most record contracts will attempt to have songwriters give their publishing to the label's publishing company, you may want to avoid this. If you decide to sign a publishing agreement, make sure it is with a reputable company, as a good publisher will make you money. You can also administer your own publishing and set up your own publishing company for your songs.

Public Performance Royalties - The copyright owner of a song has the exclusive right to perform his song in public. Therefore, no one can play your song in public (such as in clubs, at live concerts, on the radio, and on television) unless you give them permission to do so and they pay you. Performing rights societies such as ASCAP (American Society of Composers, Authors and Publishers), BMI (Broadcast Music Incorporated) and SESAC are responsible for issuing licenses to and collecting money from people who want to play your music. For example, every time your music is played on the radio, you are entitled to performance license money which ASCAP, BMI or SESAC collects for you if you belong to their organization. These organizations are involved only in the public performance aspect of the publishing industry are not traditional music publishers.

Mechanical Rights - To use a copyrighted work, one must usually obtain a license that is negotiated with the copyright owner. The Copyright Act provides for six major exceptions to the copyright monopoly that are known as compulsory licenses. These exceptions require the copyright owner to issue a license to someone else whether the owner wants to or not. The six exceptions relate to cable TV rebroadcast, PBS, jukeboxes, digital performance and distribution of records, and phonorecords of non-dramatic musical compositions.

The Copyright Act provides that once a song has been recorded and publicly distributed, a Compulsory Mechanical License is available to anyone else who wants to record and distribute the work in the U.S. upon the payment of license fees at the statutory "compulsory" rate set forth in the Act (the current

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statutory rate is about 8¢ per song). A mechanical license is the license issued by a publisher to a licensee (typically a record company or someone recording a cover song for their independent release) granting the licensee the right to record and release a specific composition at an agreed-upon fee, per unit manufactured and distributed. Mechanical licenses are available for audio-only recordings only if: (1) the song is a non-dramatic musical work, (2) that has been previously recorded, (3) the recording has been distributed publicly in phonorecords, and (4) the use of the recording will be in phonorecords only. Mechanical licenses do not apply to dramatic works, such as operas, film soundtracks, ballet scores and Broadway medleys. If these requirements are met, the mechanical license *must* be granted under the statute. Mechanical licenses can be obtained through the Harry Fox Agency (www.harryfox.com), which represents most U.S. publishers. Mechanical licenses can also be negotiated directly with the publisher or copyright owner.

Digital Rights - Digital licensing is the licensing of copyrighted musical compositions in digital configurations, including but not limited to, full downloads, limited-use downloads, on-demand streaming and CD burning. The Harry Fox Agency and the Recording Industry Association of America (RIAA) recently reached an agreement that recognized the need to obtain mechanical licenses for digital music distribution. Significantly, this agreement provides a framework for the licensing of Internet-based music subscription services. To obtain a digital license, contact the Harry Fox Agency, the publisher or the copyright owner.

Print Rights - While public performance and mechanical royalties are the major sources of publishing revenue, printed music can be lucrative as well. A songwriter receives publishing money from a print license any time sheet music of his song or a folio of a collection of his songs is sold. Money from print licenses are usually a few cents per copy printed. For example, the sheet music for “Send in the Clowns” has probably made Stephen Sondheim a lot of money from print licenses.

Synchronization Rights - A synchronization license (known in the industry as a “synch” license – ‘cause that sounds much cooler) is required any time a song accompanies a visual image. Motion picture and television companies and advertising agencies pay for the right to use songs in their movie soundtrack, show or commercial. The amount of money for a synch license varies widely. Record companies usually demand a free license to use a song in a video while a feature song for a movie soundtrack from an established artist can exceed \$100,000. Each license will generate a different fee, as there is no set rate in the Copyright Act for synch licenses. To obtain a synch license, contact the publisher or copyright owner. Publisher information can be obtained from ASCAP, BMI, SESAC or the U.S. Copyright Office.

Sampling - Sampling occurs when a portion of a prior recording is incorporated into a new composition. When a song is sampled without permission, copyright infringement of both the sound recording (usually owned by the record company) and the song (usually owned by the songwriter or publishing company) has occurred. In order to legally use a sample, you will need to contact both the owner of the sound recording and the copyright owner of the underlying musical work for permission. License fees for sampling vary greatly and depends on how much of the sample you intend to use, the music you intend to sample, and the intended use of the sample in your song. Licenses can be granted for free, for a percentage of the mechanical royalties (i.e., a couple cents for each record pressed), or for a flat fee. As there are no statutory rates for samples, the copyright owner can charge whatever he wants and does not have to let you use his work at all. Using samples without permission can lead to you paying statutory damages to the copyright owner from \$500-\$100,000 per infringement, and a court can even make you to recall and destroy all of your infringing albums. Do not rely on the “fair use” doctrine or the myth that you can use a certain number of seconds of someone’s song without penalty. Get permission.

Foreign Rights - Domestic publishers usually enter into foreign licensing or sub-publishing agreements with music publishers that operate outside of the U.S., although U.S. publishers often obtain Canadian rights when they obtain U.S. rights. Unlike in the U.S., most foreign territories have government-owned publishing organizations that collect and administer publishing.