

Anatomy of the Deal: Music Publishing

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June 17, 2025



Agenda

- Review copyright basics
- Composition copyright/publishing rights
- Performing Rights Organizations (PROs)
- Mechanical rights, licensing & royalties
- Publishing deals and admin deals
- Sync licensing



Refresher: Copyright Basics

Copyright protects original creative works

- (1) Literary
- (2) Musical
- (3) Dramatic
- (4) Choreographed
- (5) Pictorial
- (6) Sculptural
- (7) Audiovisual
- (8) Sound Recordings

17 U.S.C. § 102(a)



Copyright Ownership

Copyright exists as soon as the work is created

Creator of the copyrighted work is generally the owner of the copyright

If multiple people create the work, they are co-owners of the copyright

Anyone who contributes the creation of the work is a co-owner of the copyright



Copyright Rights

Exclusive Rights

- (1) Reproduce
- (2) Prepare Derivative Works
- (3) Distribute
- (4) Perform
- (5) Display
- (6) Perform by Digital Audio Transmission

17 U.S.C. § 106



Copyright Transfer

Copyright can be transferred (assigned)

Copyright transfer must be in writing

Exclusive license must be in writing

Work For Hire

Creator is hired and hiring party
owns the work

Work for Hire can happen in two ways:

1. Employee w/in scope of employment
2. By contract (for certain types of works)



Two Copyrights in Music

Composition

The words and music
aka the “Publishing”

Sound Recording

Recording of the Composition
aka the “Master”



The Composition

Owned by contributors to the songwriting

A % of composition = a % of publishing

There is no standard formula for %s

Can use 50% lyrics / 50% music

Some contributors can be Work For Hire

e.g., toplineers, studio musicians

Producers often get a %

Document %s upon creation: **Split Sheets**



Split Sheets

A Split Sheet is a simple contract

Should have basics of ownership

- Name of song

- Names of owners/contributors

- % owned by each person

- Performing Rights Organization info

Can also include terms & restrictions

- E.g., if a contributor can or cannot release or license



Let's Talk Money!

Composition Revenue Streams

- Public performance
- Mechanical
- Synchronization (“sync”)
- Print



Public Performance Right

Public Performance is any performance to a group larger than family and close friends

Not just a live performance

This is an exploitation of the exclusive copyright so it must be licensed

Performing Rights Organizations (aka PROs) do the licensing



Performing Rights Organizations



The Way PROs Work

Copyright owner has exclusive right to perform the composition

One owner can't license and collect for every performance of the composition

Owners grant rights to PROs

PROs grant blanket licenses for performance

PROs collect \$\$\$ and distribute to owners



PRO Splits

Composition is split in half

- Writer's Share and Publisher's Share
- Comes from publishing deals
- This is a split of revenue,
not a split of ownership

Writer who owns all of a song owns all the writer's share and all the publisher's share

Each Half may be referred to as
50% (=100%) or 100% (= 200%)



PRO Accounts

A writer can only sign up with one PRO

- Switching is possible but not easy
- ASCAP & BMI are open to all
- SESAC & GMR require an invite

Must claim both shares for each song

- A writer who doesn't have a publisher creates both a writer's account and a publisher's account



Mechanical Rights

The mechanical reproduction of a composition

When a composition is recorded, that is a use of the mechanical right

Every recording is using the mechanical right

Every recording requires a mechanical license



Mechanical Licensing

First mechanical is controlled by owner

After publication, anyone can record the composition (e.g., covers)

License is statutory and compulsory

Obligation is to pay the license fee

Record labels generally pay composition owners a mechanical license

Writer/performer can grant him/herself a free (gratis) mechanical license



Mechanical Licensing Fees

Licensing fees are set by the Copyright Royalty Board

Different fees for physical vs. digital

Physical: greater of 12.7¢ per copy or 2.43¢ per minute

Digital: 15.25% of DSP revenue divided by the total number of plays (this calculation is complicated and not easy to verify)



Paying Mechanicals

Physical

Paid by the party creating the recording

Paid to the composition owner(s)

Harry Fox/Songfile is common portal

Digital

Mechanical Licensing Collective (MLC)

Digital Service Providers (DSPs) pay the MLC and MLC pays rights holders



Getting Paid Mechanicals

Physical: sign up with Harry Fox

Digital: sign up with the MLC

OR

Work with a publishing company



Publishing Companies

Publishing company aka publisher

Publisher's traditional job is to exploit and generate revenue from the composition

Composition owner grants publisher control over the composition

Publisher tries to exploit the rights

Publisher collects the money

Publisher retains/is paid a royalty



Publishing Deals

Many different types of publishing deals

Can be for existing and future catalog

Can be for a set term or perpetual

Royalty percentage will vary

May or may not include an advance



Admin Deals

Admin deals are Administration only

- Publisher only collects revenue
- Publisher's royalty rate is much lower
- Generally terminable
- Still exclusive
- Many are open to anyone

In an admin deal, the publisher collects PRO publisher's share and MLC revenue



Sync Licensing

Sync License: To synchronize a composition or sound recording with a moving image

Involves both copyrights (or “sides”)

Syncs are specifically negotiated

For writer/performer, both sides may be in a single license agreement

Negotiations can be lengthy/challenging

Can be very lucrative



Sync Deals

Usually a flat fee (beware of “exposure”)

Allowed uses can vary from a single right to all media

Note term & exclusivity

Sync licenses generate PRO royalties

Sync agencies for artists are common and have many different models



Recap

Publishing rights = composition copyright

Document ownership % upon creation

Many revenue streams

PROs are important but don't forget
about MLC

Admin deals are helpful for collections

Sync can be lucrative



Questions?



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