

SOURCES OF MUSIC PUBLISHING INCOME

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The following explanation describes the basic sources of music publishing income.

The primary sources of income from the commercial exploitation of a song include performance rights, mechanical licenses, synchronization licenses and print rights. These sources can be exploited through film, television, videos, records, tapes, sheet music, commercials, broadcasting, internet distributions, as well as other forms of exploitation.

All income from the commercial exploitation of a song, no matter what its sources, is “publishing” income. Generally, if the songwriter is not his or her own publisher, the terms of the contract between a songwriter and a publisher will determine how the publishing income will be shared between them. Usually, the share is fifty percent (50%) of all publishing income to the publisher, and the other fifty percent (50%) of the publishing income to the songwriter. The industry, however, normally uses the terms “publisher’s share” and “songwriter’s share”. Don’t confuse the use of the word “publishing” before the word “income” as always synonymous with income that goes to the publisher. It may be easier if you think the money generated from the commercial exploitation of the song in the form of a pie; with the pie being cut approximately in half, with one (1) side going to the publisher (“publisher’s share”) and the other to the songwriter (“songwriter’s share”).

If the writer has his or her own publishing company, then both shares will go the writer. When the writer has his/her own publishing company and enters into a venture with another publisher to exploit the song, they generally enter into what is known as a co-publishing arrangement. In this case, generally speaking, the songwriter will continue to get one-half (1/2) of the pie, and the songwriter’s publishing company and the other publishing company will, in turn, split the other one-half (1/2) of the pie, perhaps fifty/fifty (50/50) or perhaps some other proportionate division. With the fifty/fifty (50/50) split of the publisher’s share, the songwriter would then in effect be getting approximately seventy-five percent (75%) of the entire pie and the publisher the other twenty-five percent (25%).

I should stress, however, that these observations are merely general. Each deal between a publisher and songwriter can result in a different division of income. The primary sources of commercial exploitation for a song are explained below.

1. Performance Income. Essentially, performance income is money that is generated by the performance of the song, whether live, in a club or broadcasted over television, radio, the internet, or any other kind of performance. Usually, in the United States, Broadcast Music, Inc. (BMI), the American Society of Composers, Authors and Publishers (ASCAP) or the Society of European Songwriters, Authors and Composers (SESAC) act as collecting agencies on behalf of publishers and songwriters to collect performance income. They are known as performing rights societies. Each performing rights society, through a series of complex formulas, determines the

appropriate share to be paid to the publisher and to the songwriter based on all the monies collected by the performing rights society through the year and the number of performances of a particular song through that year. The performing rights society then pays the publisher's share directly to the publisher and writer's share directly to the writer. If there is a co-publishing arrangement with the writer and publisher, then the writer usually looks to the publisher for his/her portion of the co-publisher's share, but not the writer's share.

2. Mechanical Royalties. The mechanical royalty is a payment made for the right to use a song on a commercial recording that is released for sale to the public either in the form of a phonorecord. Under the most recent amendment of the 1976 Copyright Act, that royalty is fixed as of January 1, 2000 at 7.55 cents per song (or 1.45 cents per minute of playing time, whichever is greater) per record made and sold. These rates will increase every two (2) years through 2008.

If a song has never been released on a record or tape for sale to the public, then there is no obligation on the part of the owner of the song to allow someone else to record the song. If another person wants to record it, then the owner can negotiate whatever fee the owner wants to charge. Once, however, the song is released on a record or tape which has been sold the public, then thereafter, anyone may obtain a compulsory mechanical license under the Copyright Act to record the song on a record that is sold commercially to the public. The person who records the song, however, has the obligation to pay the mechanical licensee fee to the publisher of the song. The money then gets divided between the publisher and the writer. The publisher generally collects the mechanical license fee, retains its share, and passes on to the songwriter his/her share.

3. Synchronization Rights. If someone wishes to use music in connection with a soundtrack for a film, television program, or video, then they must obtain permission from the owner of the music (the publisher or the songwriter if he/she has not entered into an agreement with the publisher). The owner of the music licenses the producer of the film, television program, or video to use the music on the soundtrack. Without that license, the use of the music on the film would be an infringement of the rights of the owner of the music. Usually, a flat fee is negotiated for the privilege of using the music on a soundtrack, and the amount to be paid depends on the amount of use made of the music, the type of use made of the music, and the relative bargaining strengths of the producer and the owner of the music. If the music owner is the publisher rather than the songwriter, it collects the synchronization fee, deducts its share and it passes on to the songwriter his/her share.

4. Print Music Income. Money is also generated from the sale of sheet music of a song, whether as a single song or whether as one (1) song in a book containing a number of songs. Most music publishers enter into agreements with print publishers who print the sheet music and pay a royalty to the owners of the song for the right to sell copies of the song in sheet form. This royalty is then paid to the publisher who deducts its share, and passes on to the writer his/her share. Publishers receive between 40 cents to 50 cents per single sheet music sold and approximately ten percent (10%) to twelve percent (12%) of the retail price of the book or folio multiplied by a fraction of the number of songs licensed by the publisher over the total number of copyrighted songs in the book. Writers usually get between 6 cents to 10 cents of the 40 cents

to 50 cents and ten percent (10%) to twelve percent (12%) of the wholesale price of a book based on the same proportionate formula explained in the preceding sentence.

The preceding is a very elementary discussion and is not meant to provide an in-depth insight to the intricacies of the money system in the music industry. It does lay out the basic framework and should provide you with a fundamental understanding. For a comprehensive study of music publishing income, see Money, Music & Success by Todd and Jeff Brabec.