



A lot of young musicians, songwriters and executives are so happy to be able to work in the music business that they sometimes forget that it's a BUSINESS, where you have to look out for your interests at all times. The history of the music business is filled with sad stories about people signing away the rights to their songs for eternity, usually because someone persuaded them to sign something they shouldn't have (many episodes of VH1's "Behind The Music" deal with this situation in one way or another).

Even if no one seems to care now, your songs and lyrics are your property, and they need to be protected, because they can become very valuable virtually overnight. Knowledge is power, and "Music and Money" is one of many ways that ASCAP attempts to help up-and-coming creators, musicians and executives to avoid making decisions that they'll regret later.

Just check these two examples, from a recent ASCAP discussion panel:

""Don't screw up at the beginning. I did! Do you remember a TV show called Dance Fever? I wrote [the theme], I sang it and I produced it. It played for eight-and-a-half years on every major network in America, and all I got was \$4300 because I didn't know about publishing. Guess how much money I lost over that? Can you imagine?"" (artist and artist manager Stan Shepard)

""In between his 'In My Lifetime' and 'Hard Knock Life' albums, Jay-Z learned what publishing really was about, because he didn't make a lot of money on his first albums. When we went to collect his royalties, they weren't there, because he had signed deals that he didn't really know a lot about, hey, it happens every day. So I went and investigated why he hadn't been paid, and I showed him: this is what you're getting -- but if you had done it right, this is what you would have gotten. Let's say 'In My Lifetime' sold a million records. Jay would have made maybe \$300,000 in publishing. With 'Hard Knock Life,' he's clocking close to \$2 million in publishing royalties alone [circa June '99]. I helped him just by showing him the right way to do it, so I feel real good about that."" (Big Jon Platt, EMI Music Publishing)

There are so many ways to make money in the music business, if you do it right. If you don't want to be reading about yourself in these pages, read on!

MUSIC AND MONEY

INTRODUCTION

The financial value of a songwriter's and music publisher's catalogue is based on the quality of the songs, how and how often they are used, and how they are licensed. Success in the music business does not happen overnight -- it takes talent, being associated with the right people, some luck and, most importantly, knowledge of how the business works. This overview focuses on the many sources of income for songwriters and publishers.

I. CD, TAPE AND RECORD SALES

A major source of income for many songwriters and music publishers are the mechanical royalties due from the sale of CDs, tapes, records, and downloads containing musical compositions.

Under the U.S. mechanical rate (known as the statutory rate) in effect in 2000-01 (7.55¢ per song , but see below for further explanation) a million-selling single would be worth a total of \$75,500 in combined royalties to the publisher and writer.

For an album, the above royalties would be multiplied by the number of songs on the album. For example, if 10 songs were included on an album and each received a 7.5¢ royalty, a total of 75.5¢ in mechanical royalties would be generated from the sale of each album. Thus, if the album sells between 1,000,000 and 10,000,000 copies, the combined writer and publisher royalties for the album would range from \$755,000 to \$7,550,000. Mechanical royalties are paid by the record company to the music publisher or its representative (frequently The Harry Fox Agency), who then shares them with the writer. Simple, right? Wrong... (better read on!)

II. CONTROLLED COMPOSITION CLAUSES

The 7.55¢-per-song statutory mechanical royalty can be reduced under certain circumstances (for example, if the writer is the recording artist, or if the record is sold for a lower price, like as a midline, record-club, TV-only, special-products compilation, or budget album), in which case the royalty figures may be less than those mentioned above. However, such reduced rates are voluntary and occur only if the publisher agrees, or if the songwriter is a recording artist and has accepted such lower royalties in the negotiation of the record contract.

Here's where things get complicated, so bear with us, and read carefully. Many agreements -- the majority, in fact -- contain language which provides that if the recording artist or producer has written or co-written a song, has ownership or control of a song, or has any interest in any composition on the album or single, the mechanical royalty rate payable by the record company for that composition is reduced. (They offer no reason for this, except that it saves them money!) Such compositions are referred to as controlled compositions.

Most contracts attempt to establish a 75% rate (specifically, 5.66¢, which is three-quarters of the 7.55¢ full statutory rate) for all controlled compositions. The figures are computed at the mechanical rate in effect at either (a) the time the recording is produced, (b) the date of the recording contract with the artist, (c) the date that a particular album commenced recording (or should have commenced recording per the contract), or (d) the date the recording is originally released (regardless of whether the same recording is released again at a later date on another album). Got that?

In other cases, the record company will establish a maximum aggregate mechanical penny royalty limit for an album (for example, 10 songs x 5.66¢ = 56.6¢ per album). Under these clauses, the artist or producer guarantees that he/she will secure reduced mechanical rates on all songs on the album so that the maximum penny rate (in this case, 56.6¢) payable by the record company to music publishers and songwriters for all songs is not exceeded. If this maximum aggregate album-royalty rate is surpassed -- for example, if the writer/artist wants to put 12 songs rather than 10 on the album -- the difference is normally deducted from the artist's or producer's record, songwriter, and publishing royalties, or, as in the case above, the per-song royalty rates for the writer/artist or writer/producer will be reduced proportionately. Yes, this stuff is complicated!

Now, let's take a look at how this arithmetic effects a specific situation: Let's say that the writer/performer has a 10-song x 5.66¢ maximum royalty rate on his/her album (in other words, 56.6¢ total) and, instead of writing all 10 songs, writes only eight and records two songs from outside writers -- or includes songs with samples by outside writers -- who demand the 7.5¢ statutory 2000-01 rate per song. In this case, the mechanical royalties would look like this:

56.6¢	album-royalty maximum payable by record company
- 15.1¢	two outside songs at 7.55¢ each
41.5¢	
_____ / 8	the number of artist-written songs
5.18¢	per-song royalty to artist/writer and publisher

As you can see, the writer/artist's mechanical royalty has been reduced to 5.18¢ per song from 5.66¢ per song due to the inclusion of two outside-written songs on the album. By the same token, as the writer/artist records more outside-written songs, the artist's per-song royalties for his/her own works will be reduced further. Sometimes, in fact, when a writer/artist has recorded a substantial number of songs by other writers, he/she has been put in a position of receiving NO royalties for his/her own songs, since the aggregate album-royalty maximum has been paid out to outside songwriters and publishers. OUCH! But it can get even worse: There have actually been instances in which the writer/artist's mechanical royalties have been in the minus column for every album sold because of the operation of these controlled-composition clauses. Additionally, the era of multiple remixes has given rise to a clause which provides that the writer/artist will only receive a mechanical royalty for one use of his/her song, regardless of the number of versions contained on the single or album.

If you think this seems confusing now, imagine how it feels to read it for the first time, as you're about to sign your first recording contract!

III. PERFORMING-RIGHT PAYMENTS

One of the greatest sources of income for songwriters and publishers is the money in royalty payments received from performing rights societies around the world. The performing right is one of the most important rights granted by a country's copyright laws. It is based on the concept that a writer's creation is a property right and that a license must be acquired by any user of music in order for that user to use [i.e. "perform"] a copyrighted musical work. When a song is played on the radio, on television, in a stadium, in a restaurant, over the Internet, etc. , that is a "performance," and the radio or television station, stadium etc. owes a royalty to the writer and publisher of the music.

Of the \$3-billion-plus generated worldwide each year, the U.S. performing right organizations account for approximately \$1 billion in collections, with writer- and publisher-owned ASCAP accounting for 55% of the total. These organizations negotiate license-fee agreements with the users of music (radio and TV stations, cable stations, concert halls, wired music services, airlines, etc.), which give the user the right to perform the music and lyrics of any member of these organizations. The license fees collected are then distributed to the writers and publishers whose works are performed in these various areas.

In the United States, the primary types of music use which generate performance royalties are feature performances (a "visual vocal" or "visual instrumental" -- i.e., a person shown singing or playing -- on TV, a radio performance of a song, etc.), background music on television series, specials, movies of the week and feature films, theme songs to TV series, TV logos and promos, advertising jingles, and copyrighted arrangements of public-domain compositions.

The value of each type of music use varies depending on which performing-right organization the writer and publisher belong to. Complicating matters further is the fact that two of the three organizations (ASCAP being the exception) change their payment rules without notice to their writers and publishers. Considering these numerous variables and nuances, it should be obvious that knowledge of the U.S. rules is absolutely essential for any creator, representative, or publisher.

It is truly amazing how much money can be made in the performing-rights area - in fact, a fortune can be made from a single composition. For example, in just a few years, the #1 song of the year can generate a \$2-million writer and publisher payout, the theme song from a successful TV series can generate more than \$1.5 million over a 10-year period, and the background score of a top box-office film can generate well over \$2 million in performance income during its copyright life (which is "Life Plus 70": it is protected for 70 after the last surviving author's death, after that, the copyright expires and the song becomes "public domain"). Although most writers never achieve this level of success, it's helpful to know what is possible at the top end.

IV. TELEVISION

When a producer wants to use an existing song in a weekly TV series, special, miniseries, or made-for-TV movie, the producer usually must secure permission from the song's publisher. In this regard, the producer of the show will decide how the song is to be used (for example, background vocal or instrumental, sung by a character on camera, over the opening or ending credits) and the medium over which the program will be broadcast (free TV, basic or premium cable, pay-per-view). The producer or his/her music-clearance representative

will then contact the publisher of the composition, describe how the song will be used, ask for a specified period of time to use the song in the program (usually from three years to life of copyright), define the territory in which the program may be broadcast (usually the world but sometimes limited to only specified countries), negotiate a fee, and then sign what is known as a synchronization license. This is how the standard "Love and Marriage" came to be used as the theme for *Married . . . With Children*, and how Billy Joel's "You May Be Right" wound up as the opening theme to *Dave's World*.

Since home video has become an important auxiliary market for TV programming, negotiations (often on an option basis) will take place for home use as well. Considering that some television programs (normally miniseries and made-for-TV movies) are also released in movie theaters in countries outside the U.S. (more on that later), the producer may also request such rights and negotiate additional fees for such non-television uses. And since many TV shows are eventually broadcast over media other than that on which they were initially aired (for example, a pay-TV program being broadcast on free over-the-air stations), a producer may also request prices for a wide range of additional options. Synchronization fees are negotiated and typically range from \$1,800 to more than \$2,400 for a five-year worldwide free television license and from \$6,000 to more than \$10,000 for life-of-copyright licenses.

V. MOTION PICTURES

When a movie producer wants to use an existing song in a theatrically released film -- like "What the World Needs Now" and "Hound Dog" in *Forrest Gump*, or "Groovin'" and "Blue Moon" in *Apollo 13* -- the producer must negotiate with the music publisher for use of the composition. Once an agreement is reached, the producer will sign a synchronization license which will give it the right to distribute the film to movie theaters, sell it to television, and use the song in "in context" TV promos and theatrical previews.

The amount of the motion-picture synch fee depends upon a number of factors: how the song is used (sung by a character in the film, background instrumental, vocal performance of a recording from a jukebox, etc.), the overall budget for the film and the music budget, the stature of song being used (standards like the examples above, current hits, new compositions), the actual timing of the song as used in the film (45 seconds, one minute, two minutes), whether there are multiple uses of the song in various scenes, whether the use is over the opening or closing credits, whether there's a lyric change, the term of the license (normally life-of-copyright), the territory of the license (usually the world or the universe), and whether there is a guarantee that the song will be used on a soundtrack album or released as a single. So there are lots of variables.

The synch fees (which include home-video rights) charged by music publishers are usually between \$15,000 and \$50,000, with the majority between \$18,000 and \$40,000. On occasion, a music publisher will reduce the synchronization fee for a song if the producer guarantees that there is a soundtrack-album commitment from a major label and that the song being licensed for the film will be on the album. Considering the phenomenal success of some movie soundtracks -- and the royalties that are generated -- such a reduction in the synch fee may substantially benefit the publisher and songwriter in the long run, but each situation must be decided on its own merits. In most countries outside the United States, motion picture theaters are required to pay performance royalties for music used in theatrically distributed films. These fees are collected by the local performing-rights society in each country (PRS in England, GEMA in Germany, JASRAC in Japan, SACEM in France, SOCAN in Canada, APRA in Australia, etc.) which, in turn, distribute royalties to the writers and publishers of music contained in the films distributed in their territories.

The foreign societies will remit the writer's share of such monies directly to the writer's performing rights society, which will then pay these theatrical-performance royalties as a foreign distribution. In simple language, what this means is that, if you managed to get a song in a movie that becomes a hit overseas, you'll get checks from your domestic performing rights society that they in turn have received from the foreign performing-rights organizations that collected the money for you in the first place.

In contrast to the handling of writer royalties, the music publisher normally allows its representative in each foreign territory to directly collect its share in the local country. Theater license fees vary by country and are usually either a percentage of the theater's box office receipts or a fee based on the number of seats or the number of screenings per week. Because of the worldwide appeal of many motion pictures -- the Batman and Terminator series, to cite a couple of obvious examples -- it's not unusual for successful films to generate between \$50,000 and \$200,000 in total theater performance royalties.

VI. HOME VIDEO

Since the VCR market has become enormous throughout the world, the sale of videos represents a significant source of revenue for the music publisher and songwriter. Home-video licensing is normally handled in one of three ways:

1. In the per-video royalty approach, the royalty paid is based on a set rate (usually from 8¢ to 15¢ per song) for each video sold. For example, if 100,000 cassettes are sold and a particular song has a 10¢ royalty, the payment will be \$10,000.
2. Most video distributors demand that publishers accept a one-time buy-out fee for all video rights, regardless of how many videos might be sold

(a fact of life in today's movie and TV-series episode market which must be faced and negotiated accordingly).

3. Under the roll-over advance formula, the producer or video distributor pays a certain advance for a specified number of videos, with additional predetermined sums paid as certain sales plateaus are achieved (for example, \$8,000 for the first 100,000 units and an additional \$8,000 for each additional 100,000 units sold).

VII. COMMERCIALS

An extremely valuable source of income for the songwriter and music publisher is the use of songs in radio and TV commercials for consumer products.

Microsoft paid a pretty penny to use the Rolling Stones' "Start Me Up" in its Windows 95 campaign, and "When You Wish Upon a Star" (from the 1940 Disney animated feature Pinocchio) has been the musical hook of TV spots for Disneyland and Disney World for years. The fees paid by advertising agencies and their clients for commercials can be substantial (from \$125,000 to more than \$500,000 per year for successful songs), depending on whether (a) the commercial is for radio or TV, (b) it's targeted for a national or limited-territory campaign, (c) there are options for other countries, (d) the original lyrics are being changed or new lyrics added, or (e) the ad agency requests the song for all-advertising exclusivity or product-category-only exclusivity (we'll explain that further in a minute).

On occasion, an agency will ask for a non-broadcast test period during which it will test the commercial in shopping malls, inter-agency screenings, etc., to determine whether the pairing of the song and the product is effective. Fees for this off-air testing range from \$3,000 to more than \$20,000, and the term normally ranges from a week to a few months. In other instances, the ad agency will request a limited-broadcast test period -- during which a commercial will actually be aired -- for a specified regional market (for example, television in New York or California for two months only, or a three-month test in cities that contain not more than 10% of the total U.S. population). Fees for regional-broadcast test periods normally range from \$5,000 to more than \$30,000, depending on the duration of the test period, the population of the region, the importance of the song, the product being advertised, and whether there has been a lyric change.

Certain major advertisers may request total exclusivity (a restriction for licensing to all products as opposed to just similar or competing products) from a publisher, but the fees for this type of grant are substantial for a recent hit song or well-known standard (from \$150,000 to more than \$500,000), since the song is effectively being taken out of the marketplace. However, most commercial licensing agreements provide for restrictions on licensing only competing, incompatible, or similar products. For example, a beer commercial may restrict

the writer or publisher from licensing the same song for another alcoholic beverage commercial but will allow licensing for use in a food, electronics, or automobile advertising campaign.

VIII. BROADWAY MUSICALS

One of the most lucrative markets for a song can be its use in a Broadway show, since, if the play is a hit, the income from live theatrical performances, soundtrack albums, singles, film rights, touring productions, home video, sheet music, and stock and amateur production rights can mean hundreds of thousands of dollars to the songwriter and publisher. Perennials like "A Chorus Line," "West Side Story," and "Phantom of the Opera" have generated huge revenues over the years.

On the other hand, considering that the vast majority of musicals presented on Broadway lose most if not all of the money invested and that getting a song into a Broadway play is extremely difficult, this is an area with which most songwriters and publishers, unless they're involved with songs actually created for the play, will have little or no contact.

Combined music and lyric royalties for the Broadway run and first-class national touring productions usually range between a 3% pre-recoupment of costs royalty and a 4% post-recoupment pro-rated share of the box-office receipts if a percentage royalty is negotiated (which can mean from \$200,000 to more than \$10 million per year for all songs in a hit show) or a fixed dollar amount per week (from \$250 to \$1,000, regardless of the success of the play) if a non-percentage royalty is agreed to.

IX. RECORDING ARTIST ROYALTIES

This overview is primarily concerned with some of the major sources of songwriter/publisher earnings, but since many songwriters are also recording artists, a brief mention should be made of the contractual factors that affect income in the recording arena. Artist royalties usually range from 10% to 25% of the suggested retail price for top-line albums, with deductions being made for packaging costs. For example, if a songwriter/artist has an 16% royalty, a 25% packaging deduction, and sells 1 million CDs in the U.S. of a \$17 suggested-retail-priced album, the basic calculations would look like this:

\$17.00	CD Retail Price
<u>x .25</u>	Packaging deduction rate
\$4.25	Dollar deduction
\$17.00	CD Retail Price
<u>- 4.25</u>	Packaging deduction
\$12.75	Royalty base
<u>x .16</u>	Royalty rate
\$2.04	Artist Royalty
<u>x</u>	Album Sales
<u>1,000,000</u>	
\$2,040,000	Artist Royalties

Recording-artist royalties represent an extremely complex area, and the above illustration is included only to present the basic principles involved. But you should know that there are a bunch of additional issues -- including, but not limited to, free goods; reserve accounts; return privileges; midline, budget-line, record-club, and foreign reductions; 90% sale provisions; new-technology rate reductions (which affect CD royalties); cut-out and surplus-copy provisions; video, tour support, and promotion expenses; recording costs; advances; and controlled composition clauses (sheesh!) -- which further affect the monies a songwriter/recording artist receives.

X. FOREIGN COUNTRY ROYALTIES

Another source of income for most U.S. writers are performance, mechanical and artist royalties generated in foreign countries. Effective and knowledgeable representation (whether it's your performing-rights society, publisher, or other representative) is a necessity for proper collection in this area.

XI. FINALLY . . .

The world of songwriting and music publishing may be complex, but it's far from mysterious. Just as every other business has its particular rules, special ways of conducting business, idiosyncrasies, and unique revenue-producing areas, so too does songwriting/publishing. This erstwhile business of pennies, piano rolls, and sheet music has been transformed by the technology of the communications industry into a multibillion-dollar worldwide industry and one of the centerpieces of entertainment programming. It's a difficult field to succeed in and a difficult field to remain successful in. But even though the music business is based on creativity, it's still a business, and knowledge of its inner workings is one of the keys to a lasting, productive, and financially rewarding career.