

publishing agreements

- part I

business

The views and opinions expressed in this article are not meant to substitute for legal advice which should be sought in each particular instance.

Introduction

This two-part article seeks to educate the reader on the basic terms and conditions found in standard music publishing agreements. We will start in this Part I with a brief description of the four basic music publishing income streams. It is important to understand these streams to be able to deal with the standard contract terms in publishing agreement which will be reviewed in Part II of this article (see next issue of Canadian Musician).

1. Mechanical Royalties

There is a statutorily regulated fee which is set by negotiations between Canada's music publishers and Canada's recording companies. The current fee, as of the time of this article is 7.7 cents per song under five minutes.

This amount is paid by the record company to the music publisher for basically every copy of the song that is manufactured. So, for example, if an album contains 12 songs (all under five minutes) and 10,000 copies of the album are manufactured the record company would be required to pay \$9,240 calculated as follows: $12 \times 10,000 \times .077 = \$9,240$.

It is easy to see how mechanicals can amount to a substantial amount of income if your song is being manufactured in substantial quantities.

UNDERSTAND: THIS IS NOT THE SAME AS THE "ARTIST ROYALTY" THAT THE RECORD COMPANY PAYS. The record company pays two royalties: one to the artist ("Artist Royalty") and one to the songwriter(s) ("Mechanical Royalty").

For a more involved look at this very detailed topic I highly recommend you check out www.cmrra.ca which is the Web site for the Canadian Mechanical Reproduction Rights Agency. They are a tremendously helpful organization and can assist you in licensing and collecting mechanical royalties on your behalf.

2. Performance Royalties

This is songwriting income which results from the public performance of your music, i.e. radio exploitation, use in a film, use on a TV show, performance in a live venue; or, use on the Internet.

The organization that is charged with collecting and distributing this money in Canada is, The Society of Composers, Authors and Music Publishers of Canada (SOCAN), which can be found online at www.socan.ca.

Every three months SOCAN distributes money to its members based on a complicated computer logging system that basically pays based on the popular use of your song. If your song is played more, you make more money.

I continue to receive money for a song I co-wrote which was used in a movie (*National Lampoon's Last Resort* - I'm sure you all saw it). I licensed this song in 1992 and received about \$12 Cdn. on my last statement from this use (10 years later!). Over the past 10 years I have probably received about \$2,000 from SOCAN as a result of this license. Imagine what kind of money you would see for a song in *Spider-man*!

SOCAN has sister societies worldwide that collect this income and turn it over to SOCAN for distribution to its members.

3. Synchronization Licenses

In order to secure the right to use your song in a film or TV production the producers must secure a synchronization license from you (or your publisher if you have one).

The size of this fee will vary based on a number of factors, mainly: (i) budget for the production; (ii) length of use in the production; (iii) type of use in the production (i.e. background or foreground); (iv) territory of use; (v) term/length of use; (vi) video, trailer rights, etc.; and, (vii) the almighty bargaining power.

THIS IS NOT THE SAME AS THE SOCAN/PUBLIC PERFORMANCE MONEY DESCRIBED ABOVE. If you license your song in the next *National Lampoon* movie you will negotiate and sign a synchronization license with the film production company and, hopefully, the film production company will pay you a license fee when the song is ultimately used in the production. I have seen fees ranging from \$0 to \$5,000,000. The synchronization fee may be minimal but keep in mind that the backend money (SOCAN/Public Performance) can put extra cash in your pocket.

4. Print, Other Income

Music stores still sell sheet music. This is considered publishing income. This is typically a fairly minimal share of any songwriter's overall income. Most of the

major music publishers farm out the work of developing, designing, distributing, marketing and selling print.

There are other income streams popping up everyday (i.e. songs on cell phones, songs in video games, songs in Barbie dolls, etc.). All of these uses generate publishing income.

Conclusion

Now that we have briefly reviewed the four major music publishing income streams we are ready to look at the various contract terms found in a typical publishing agreement. Join us next issue for a look at these standard terms.

If you can't wait for the next issue of *CM* I highly recommend, Jeff and Todd Brabec's, *Music, Money and Success* which is an excellent, detailed examination of the topics covered in this two-part article.

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