

The Recording Industry

Second Edition

by

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Music Publishing: The First Stream

It All Begins with a Song

— Slogan of the Nashville Songwriters Association International

Without a song, there would be nothing to perform or record, so it is logical to begin a closer examination of the three income streams with music publishing. This income stream is referred to as the music-publishing stream and not the songwriting stream because very few people ever made any money from simply writing a song. The money was made from the publication (uses) of that song. Even when songwriters “own their own” songs, the songs are almost always actually owned, in the copyright sense, by a music publisher, even if it is the songwriter’s music publishing company. Therefore the primary focus of this chapter is music publishing instead of songwriting. However, there are so many aspiring songwriters in bands and as “just plain” songwriters that the development of writers deserves some mention here. The same has been done for aspiring recording artists throughout the book.

The Music Business Three-Income-Stream Model—Revisited

The three income streams in the music business discussed in Chapter 1, recordings, music publishing, and live performances, are interrelated. The common gene in the relationship is recordings. There would be very little music-publishing revenue without popular recordings. The sale of the recordings provides mechanical royalties for the publishers of the songs on those recordings—about 35 percent of music publishing income (see Figure 4.1). Another 15 percent of publishing revenues are derived from radio airplay of recordings. The majority of print music

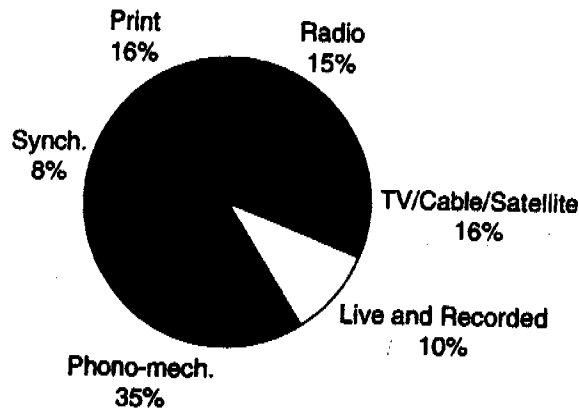


Fig. 4.1 Worldwide publishing revenues (2000). National Music Publishers' Association. *International Survey of Music Publishing Revenues, 2002.*

sales are of piano-vocal editions of popular singles and folios of popular albums or recording artists. Based on the amount of popular music in motion pictures and television, it is reasonable to estimate that one-half (or more) of television performance and film synchronization royalties are the result of songs and recordings by popular recording artists. Finally, the vast majority of live and recorded performances (12 percent of publishing revenues) are of songs made popular by recordings. Totaling these up, *over 75 percent of music publishing royalties are the result of popular recordings.*

Music Publishing: Then and Now

Copyrights Don't Talk Back.

— Attributed to Lou Levy, longtime president of MCA

The music publishing business is not what it used to be. In the 1890s music publishers sold millions of copies of sheet music. In 1893, *After the Ball* became the first song to sell one million copies of sheet music, hit songs sold as many as two million copies in print by 1909. Even though sound recordings were catching on in 1920 and accounted for about \$3 million dollars of publishing revenue, sheet music sales still accounted for more than \$16 million, about 88 percent, of publishing income. Sheet music sales plummeted during the Depression to a low of about \$2 million dollars in 1933. During that same time performance revenues, largely from radio, grew and sustained the music publishing industry through World War II.¹ Print sales failed to make a significant recovery after the war. *Billboard* reported in 1955 that publishers had to find new income because sales of even the most popular songs in sheet music were usually less than

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TABLE 4.1 Music Publishing Income Sources: U.S. Details 1992–2000 (U.S. Dollars in Millions)

Source	1992	1994	1996	1998	2000
Radio Performance	147	184	213	242	291
TV/Cable/Satellite	258	242	252	275	317
Live and Recorded	97	150	163	181	203
Phono/Mechanical	305	427	493	530	691
Synchronization	51	52	80	112	157
Print	172	187	198	234	316
TOTAL	1,048	1,242	1,424	1,595	1,975

Source: Data from National Music Publishers' Association, Inc. *International Survey of Music Publishing Revenues* (1994–2002).

300,000 units. The reliable source of income was performance royalties.² That, however, was before rock and roll jolted record sales into ever higher gear and pushed mechanical royalties into a close second place behind performance royalties. Even though revenue from print music recovered and accounted for about 38 percent of the publishers' estimated \$283 million share of revenues by 1978, the music business had been forever changed.³ By the twenty-first century, the recording industry dwarfed music publishing. In 2000, domestic revenue from the sale of recordings in the United States was \$14.3 billion—nearly ten times the \$1.98 billion reported by the National Music Publishers' Association for that same year.⁴ Revenues from the sale of recordings and from performances accounted for 77 percent of music-publishing income, while distribution of print music was reduced to a share of about 16 percent (see Table 4.1). A century of technological innovation and evolution and the concomitant change in copyright laws (see Chapters 2 and 3) turned an industry that once created and marketed products into a copyright industry that primarily licenses others to utilize its properties.

Overall Structure

Music publishing is now an integral part of the recording industry. Every major label owns publishing interests, as do many smaller labels, independent producers, and recording artists. Despite the existence of literally thousands of small music publishers, most of the rights are administered through a handful of publishing giants. The small songwriter, artist, and producer-owned publishing companies simply do not have the expertise or personnel to deal with the complexities of music publishing. They usually enter into agreements with some of the giants to copublish or to administer their catalogs.

The large publishing companies are getting larger by acquisition of smaller companies or by entering into administration or copublishing agreements that allow the "Goliaths" to share in the revenues generated by the "Davids." The willingness of the larger companies to use this approach makes it possible for smaller companies to exist and be profitable. It also removes one of the mediators between the songwriters and their audiences. No longer is the

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publisher trying to second guess what an artist or producer will want to record and therefore accepting only safe songs. *Safe songs* in the twenty-first century are songs that are written by songwriter/artists who are already under contract or who have good possibilities of obtaining recording contracts.

The three largest music publishers in the world, EMI Music, Warner/Chappell Music, and Universal Music, are owned by three of the largest recording conglomerates. From the late 1980s and into the twenty-first century, record conglomerates actively built their music publishing interests. All of them have engaged in major publishing acquisitions. Sony Music had no publishing when it started in 1989 with the acquisition of the CBS, Inc. record labels; CBS had earlier divested itself of its music publishing with the sale of CBS Songs to SBK Entertainment in 1986. At that time CBS Songs was one of the five largest music publishers in the world. By 1993 Sony Music had emerged as a top ten music publisher in the United States through acquisitions such as the Tree catalog (Tree was the most successful country music publisher at that time) in 1989. In 1994 Sony Music entered a co-venture deal with Michael Jackson, who owns many Beatles tunes in his ATV Music catalog. Sony reportedly paid Jackson \$100 million for that deal and continues to expand.⁵ PolyGram International Music Publishing went from a major player to minor league when it sold Chappell Music to Warner Brothers in 1984 for about \$200 million. PolyGram immediately reentered the publishing fray with the acquisition of Dick James Music (early Elton John/Bernie Taupin catalog) in early 1985, Cedarwood (a Nashville firm), and others.⁶ MCA Music Publishing (now Universal Music Publishing) also announced its intention to compete globally through catalog acquisition. MCA mentioned no specific catalogs except to say a seven-figure deal was pending for a Nashville company.⁷ When PolyGram and Universal merged in 1998, the new company (Universal Music), became the third largest music publisher. Universal made a major addition to its status in 2000 with the acquisition of Rondor Music for a reported \$400 million. BMG Music Publishing began in 1987 and went on a building spree after the acquisition of RCA's labels and music interests, buying 73 catalogs in a five-year period from 1988 to 1993. BMG acquired foreign licensing from Famous Music (Viacom's music publishing division of Paramount) in 1995 when Famous's previous deal with Warner/Chappell expired.⁸ BMG acquired the entirety of Zomba Music Group, including music publishing and labels, in 2002 for \$2.7 billion. That deal may have pulled BMG into third place among the music publishers of the world. EMI Music Publishing (the largest), also continued to acquire song copyrights with the 2003 acquisition of 80 percent of the Jobette catalog—the songs from Berry Gordy's Motown Records.⁹

The competitiveness of the conglomerate-owned publishing companies is evident in their success at having their songs on hit recordings. As Tables 4.2 through 4.4 indicate, the top two popular music publishers in terms of chart share across all three most popular genres—pop, R&B, and country—are EMI and Warner/Chappell. Universal was a clear third with

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TABLE 4.2 Top Pop Publishers, 1998–2002
(By Number of Singles in Top 100)

Publisher	Average Rank	Years in Top 5	Average Number of Singles
EMI Music	1	5	162
Warner/Chappell	2	5	128
Universal Music	3	4	82
Sony/ATV Music	4.6	5	56
Zomba	4.3	3	44
Famous Music	4	2	28
Realsongs	4	1	8

Source: Data compiled from *Billboard*, Year-End Issues, 1998–2002.

Zomba probably fourth, but that was prior to the BMG purchase of Zomba. The first year of combined figures will not be out until 2003 or 2004. Sony, BMG, and Almo/Irving round out the top spots. A proposed merger between BMG and Warner Music Group (WMG) in 2003 threatened to upset the hierarchy by merging the music publishing interests of the two firms. WMG was reportedly considering selling Warner/Chappell or some of the Warner/Chappell catalog in order to allow the other parts of the two firms to merge.¹⁰ A similar situation developed with the proposed Sony-BMG merger in late 2003.¹¹ At the end of 2003 there were no major independent music publishers capable of challenging the power of the big five music/media conglomerates in the music-publishing income stream.

Why the sudden attention to music publishing by the recording conglomerates? For one thing, the mechanical royalties paid by record companies to music publishers for the right to make recordings of songs are expenses to the labels. If labels owned publishing in the songs their artists recorded, they could take their mechanical royalty expenses out of their record company pockets and put them as revenues into their publishing company pockets. Most recording artists in the 1990s and beyond were entirely self-contained; they wrote and performed their own compositions. It was no longer necessary to obtain songs from a music publisher who had songwriters creating songs for other people to record. The record companies marketed the recordings that created the hit songs. Why,

TABLE 4.3 Top R & B Publishers, 1998–2002
(By Number of Singles in Top 100)

Publisher	Average Rank	Years in Top 5	Average Number of Singles
EMI Music	1	5	197
Warner/Chappell	2	5	134
Universal Music	3.3	4	83
Zomba	3.8	4	58
Sony/ATV Music	5.2	5	46

Source: Data compiled from *Billboard*, Year-End Issues, 1998–2002. (See Table 4.2)

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TABLE 4.4 Top Country Publishers, 1998–2002
(By Number of Singles in Top 100)

Publisher	Average Rank	Years in Top 5	Average Number of Singles
Warner/Chappell	1.8	5	67
EMI Music	2.2	5	68
Sony Music	2.6	5	65
Universal Music	3.3	4	56
Almo	4.5	2	26
BMG Music	5	2	25
PolyGram Music	5	1	37
Realsongs	5	1	4

Source: Data from *Billboard*, Year End Issues, 1998–2002. (See Table 4.2)

reasoned the labels, should some other party get all the benefit from the label's promotion of the recordings?

Finally, the income stream from music publishing is more stable and longer term than the income stream from the hit recording that produced the hit song. A label will probably get only three or four shots at earning income on a hit record: the original recording, a greatest hits collection, perhaps a boxed set if the artist really has a long career, and later reissues as historical or collector's items. Every one of these also makes money for the publisher. In addition, the publisher gets royalties every time the original record gets played on the radio as an oldie, whenever the artist may perform it on television, when it is turned into background music for use in hotels, restaurants, and other businesses or organizations (sometimes referred to as in a tongue-in-cheek manner as "elevator music"), when sheet music is sold, and most importantly, when someone else records it. The potential to earn royalties even without recordings is limited, but clearly illustrated by the song "Happy Birthday." Very few recordings are made of "Happy Birthday" any more, but the asking price for the copyright to that song, which is *not* in the public domain, was \$12 million in 1988. "Happy Birthday" reportedly earns one million dollars every year in royalties.¹²

Cover versions (recordings made by an artist different from the one who originally recorded the song) can generate publishing profits for years. For example, the song "Who's Sorry Now," originally written in 1923 and a number two hit for Connie Francis in 1958, had been recorded more than four hundred times by artists all over the world ranging from the Glenn Miller Orchestra, to Willie Nelson, to Nat "King" Cole by 1985.¹³ That is what publishers call an *evergreen*, a song that keeps on earning royalties long after the popularity of the original recording has faded. Country songwriter/artist Dolly Parton wrote her song, "I Will Always Love You," for her 1974 *Jolene* album. It was a number one country single that year. Then in 1982 it was included in the film version of *The Best Little Whorehouse In Texas* and again hit the top of the country charts. But the

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greatest success came from the smash hit performance by R&B/Pop artist Whitney Houston in the soundtrack for the movie *The Bodyguard* more than a decade later.¹⁴ Even songs written and originally recorded by rock artists may turn into hits by other artists years later. In 1977 the rock group Aerosmith had a number two hit with "Walk This Way." Nine years later, Run-DMC had a number one hit with a version of it in a genre (rap) that did not even exist when Aerosmith's first version was recorded.¹⁵

Copyrights generally last for the life of the songwriter plus seventy years (or for ninety-five years for works first published between 1923 and 1978; see Chapter 2 for details), long after most people have lost any interest in purchasing the original recording of a song. The value of the copyrights in the master recording is likely to have a much shorter life. The record company can therefore extend the earning potential of the hit recording they originally created by having an interest in the song which that recording made popular as well as in the original recording.

Music Publishing Functions

Basic Functions

Music publishers perform much the same functions with songs that labels perform with recordings. The primary difference is that the publisher deals with an intangible property right, the copyright, and the label, although it will acquire copyrights in the sound recordings (masters), is much more concerned about selling copies of those masters in the forms of CDs, tapes, and downloads. The primary functions of a music publisher are the acquisition of copyrights and the exploitation (in a positive, business sense) of those copyrights.

Publishing Company Structure

A music publishing company's internal structure and functioning very much mirror the two primary functions of acquisition and exploitation of copyrights. Those functions are usually split between creative and administrative divisions. The creative division is in charge of signing songs and songwriters to contracts with the company, promoting the company's catalog of songs to prospective users (*song plugging*), and possibly developing potential songwriter/artists in a role not unlike that of A&R people at record labels. Usually the people undertaking these roles are known as *professional managers*. (Do not confuse professional managers at music publishing companies with personal managers for artists discussed in Chapter 5.) The professional manager is frequently a song doctor, working with songwriters to help them create the most marketable songs. Professional managers must know producers, artists, A&R people, movie producers, and as many other potential users of their songs as they can in order to fulfill the role of song plugger. Because they become familiar with what

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makes the best recording for a song and often produce the demos used to promote the song to producers and the like, it is not uncommon for professional managers to become record producers as well.¹⁶

The administrative side of the music publishing company is the paperwork side of the business. It will usually include copyright administration, licensing, accounting, and perhaps business/legal affairs units. The copyright administration unit takes care of registering the publisher's songs with the Copyright Office, recording other information with the Copyright Office, such as notices of death or transfers of ownership, and renewal of copyrights for songs published prior to 1978. The licensing unit works with the Harry Fox Agency (the primary agency that deals with mechanical licensing; though some companies may work with other agencies) and the publisher's performing rights organization affiliate for the clearance of new compositions and recordings, and directly issues other licenses, including print licensing and advertising uses. Because the music publishing business depends on the pennies earned from royalties as a result of the various uses of the songs, the accounting unit is very important. With thousands of uses for thousands of songs by hundreds of different songwriters, it is a major task to insure that everyone receives their proper payments for their songs. If there is a separate business/legal affairs department, it will be in charge of contract negotiation with songwriters, complex license negotiations, and catalog acquisitions.

Copyright Acquisition

The Traditional Way

The classic model for copyright acquisition goes like this. Songwriters, either on their own or under contract to music publishers, are moved to write songs about something. Melody and lyrics are created and woven together. The songs are presented in some manner (*pitched*), perhaps by a live performance, perhaps by a demonstration recording (*demo*) sent to publishers. The publisher tries to assess the potential that the song has for becoming recorded by other people. If the publisher believes a song is likely to be recorded, the publisher signs a contract with the songwriter in which the songwriter assigns the copyright to the publisher in exchange for roughly half of any royalties that may be generated by the exploitation of the song. The publisher and songwriter enter into a kind of partnership, with the songwriter creating a product that the publisher will then attempt to market. The publisher will probably have a high-quality demo made of the song to present the song to people likely to record it. The publisher will then pitch the song to recording artists, producers, and A&R people at record labels with the hope of attracting someone to record it. Once it is recorded and released, the publisher will then (perhaps) help promote it to radio stations. If the song is successful enough, the publisher might cause sheet music to be printed and sold. The publisher will also try to get other

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artists to cover the song. The publisher may try to get it used in motion pictures. Meanwhile, the publisher will sit back and collect royalties from the sale of copies of the recording and from the performances of the song on radio and television.

For a long time, beginning before the invention of phonograph recordings, that is the way it worked. In the late 1800s and early 1900s, songwriters wrote tunes and publishers' employees called *song pluggers* pitched them to minstrel show and vaudeville performers. The song pluggers got their name from the fact that a performance before an audience was called a *plug* for the song. People would not buy sheet music for the songs until they had heard the song in performance. The more plugs a song got, the more exposure it got; the more exposure it got, the more sheet music it sold. In those days it was common for a songwriter to receive a flat fee for a song instead of a royalty. Songwriters wrote tunes that went into their own or others' theatrical productions. With the advent and increasing popularity of recordings in the early 1900s, the song pluggers pitched tunes to recording artists and A&R people at record companies to get them recorded. In the 1920s, 1930s, and 1940s, song pluggers pitched tunes to bandleaders to get them performed on network or local radio. For many of these plugs the publisher would often pay a "gratuity" to the performer. This widespread practice later turned into *payola* in the record industry (see Chapter 9).

The "Modern" Model

There are fewer and fewer artists who are just singers. I mean, Bing Crosby's gone.

— John Titta, Creative Vice President, Warner/Chappel Music¹⁷

The emergence of rock and roll transformed the music publishing business just as it transformed radio and the recording industry in general. In rock it was much more common for the songwriter who wrote the song and the artist who recorded the song to be the same person. Some say it was this genuineness of message from the songwriter interpreting his/her own composition that created much of the appeal of rock music. For performers who understood the business, it may have been an attempt to gain some economic rewards from their performance of a song, in addition to its sales in recordings. Because there was no performance right in a recording, the only way to share in the income generated by radio and television performances was to be a songwriter or copyright owner of the musical composition.¹⁸ Although there were great pop songwriters who did not record their own material in the 1960s and 1970s (Bert Bacharach; Carole King and Gerry Goffin; Brian Holland, Lamont Dozier, and Eddie Holland [the Holland-Dozier-Holland team who wrote many of Motown's great

hits] to name just a few), the trend was, and still is, toward the artist/writer dominating the popular music field, particularly rock. Even in country music, the last bastion of the traditional songwriter-publisher relationship, the artist/writer has become the dominant model.

Many of the songwriters whose names appear in *Billboard's* top ten songwriters lists defy categorization. Kenneth Edmonds (aka "Babyface") is one of the most successful songwriters of the 1990s. He is a recording artist with hit records of his own, plus he has produced other artist's hits, plus he has his songs recorded by artists whom he does not produce. A significant number of the songwriter/artists in the top ten list not only write for themselves but for other artists as well. It is extremely rare to find a songwriter in the pop top 10 list who is a songwriter only. The other trend of the 1990s and beyond is co-writing. Two-thirds of the songwriters in the top ten lists for 1991 through 1995 wrote songs with other songwriters, producers, or artists.

How does a publisher proceed to acquire copyrights under the new model? Many publishers have taken on an A&R function. They actively seek songwriters who are, or have the potential to become, recording artists as well. They attempt to sign these songwriters to publishing deals before they are signed by record companies. The publisher may pay the songwriter/artists an advance in a form that allows them to develop their writing, arranging, and performing talents without having to keep a "day job." The publisher also helps the songwriter/artist seek recording and management contracts, or may even go so far as to use the publishing company's studios to create a master that can be released on an independent label in the hopes of selling even 20,000 to 30,000 copies. Songwriters/producers are also a target for this kind of development by publishers, particularly in the R&B and urban field. In exchange for that developmental advance and the possibility of future royalties, the songwriter/artists pledge their output of songs for several years to the publisher.¹⁹ Perhaps the most successful example of this tactic is Alanis Morissette, whose *Jagged Little Pill* album became the best-selling debut album by a female artist to that time when it passed the eight million copies mark in 1996.²⁰ She had been signed to a publishing deal with MCA Music Publishing in Canada for seven years before her 1995 album debut.²¹ Even in such developmental deals, the publishers often have to content themselves with a smaller share of the total publishing income by entering copublishing deals with the songwriter/artist's publishing company.²²

Publishers also bid for the publishing rights to the songs of new songwriter/artists who have just signed with labels. If the songwriter/artist does not sign with the label's affiliated publishing company at the same time they sign a recording agreement, then the publishing is particularly attractive because there is a high probability that the songs will be earning

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royalties as soon as the songwriter/artist and label complete and market their first album.

Finally, publishers still sign individual songwriters to agreements even when the songwriter is not likely to develop into a recording artist. In such instances the song material has to be particularly strong, because the publisher will have to find a market for it instead of having a ready-made market with a songwriter/artist's own recordings. It is also still possible for songwriters to have individual songs accepted by a music publisher even though the songwriter is not under any long-term agreement with the publisher. This is, however, becoming much less common in all genres.

Songwriter Agreements

Single-Song Contracts

The most basic agreement between a publisher and songwriter is the single-song agreement. It is signed whenever a publisher acquires the copyrights to a song, whether it is from an unknown songwriter for one song only, or from a songwriter under a long-term exclusive songwriter agreement (see below). Most of the terms in a single-song agreement, like most of those in an exclusive agreement, are negotiable. What appears below are the terms likely to be in a typical agreement.²³ If the songwriter is of sufficient stature, has their own publishing company already set up, or already has a recording agreement, then the share of the publishing revenues may be increased by negotiating a different kind of deal such as copublishing or administration. One observer commented, "Fading into distant memory is the era when, by and large, a publisher took a song and held 100 percent of the publishing."²⁴

Typical single-song agreement terms include:

- **Grant of rights:** The songwriter assigns (sells) all of the copyrights in the song to the publisher for the life of the copyrights, throughout the world. International rights are somewhat negotiable, especially if the publisher is not large enough to have the ability to market the song on a worldwide basis.
- **Reversion:** Any grant of copyright is subject to the Copyright Act's termination right. The songwriter has the statutory authority to end a transfer of ownership or nonexclusive license after a period of thirty-five to forty years (see Chapter 2 for details). A songwriter with some leverage may also be able to negotiate a contractual right to have the publisher transfer the copyrights back to the songwriter if the publisher fails to have the songs recorded or published within some set period of time, usually one to two years with five years as a maximum. The publisher will be willing to do this if there are no unrecovered advances outstanding at the time.

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- **Advances:** Advances are prepayments of royalties that the publisher will seek to recoup out of royalties earned. In a single-song agreement the advance is usually a small lump sum ranging from nothing to typically several hundred dollars. Publishers usually will not pay advances unless the songwriter has some track record of success or the near assurance that the song will be recorded by some popular artist or by the songwriter/artists themselves. Major advances occur only in exclusive songwriter agreements.
- **Royalties:**
 1. Mechanical royalties are usually divided 50/50 after any collection fee from the Harry Fox Agency or other mechanical collection organization is deducted.
 2. Performance royalties are usually split by the collecting performing rights organization (ASCAP, BMI, SESAC, and a few smaller agencies) and paid separately to the publisher and songwriter. Therefore, the songwriter does not usually get any percentage of what the publisher collects. *If the performance income were paid 100 percent to the publisher, then the songwriter would expect to get 50 percent of the publisher's net.*
 3. Print royalties may simply be split 50/50 out of the publisher's net receipts. More often, the publisher pays a percentage royalty based on the wholesale or retail price of the music being sold, or even a *penny rate* (a flat rate of so many cents per copy sold). If a percentage of a price is used, the songwriter typically gets 10 to 15 percent of wholesale for folios (song books), and 10 percent of wholesale for other print (not including sheet music). For sheet music (also known as piano-vocal editions) publishers often pay a penny rate of 7 to 10 cents per copy. This approach to sheet music does not come close to a 50/50 split because the publisher is paid a percentage of the retail price approximating 70 to 80 cents per copy. The per-copy sheet music rate is not often negotiable. One songwriter refers to it as a "sacred cow."²⁵
 4. Other royalties and fees covering a wide range of uses, specified and unspecified, are usually split 50/50 based on the publisher's net receipts.
- **Cross-collateralization:** The publisher will usually ask that any advances be recouped out of any royalties due to the songwriter under "this or any other agreement" between the two parties. For example, royalties earned in one year can be used to recoup advances paid in an earlier year. Royalties earned from one song can be used to recoup advances paid for a different song. The worst scenario is that publishing advances can be recouped from any recording royalties or advances, although it would be more common for recording

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advances to be recouped out of publishing advances if the songwriter/artist had signed recording and publishing agreements with the same company. A songwriter can usually at least limit the cross-collateralization in a publishing agreement to publishing royalties. On the other hand, a publisher would have no right to cross-collateralize against a songwriter/artist's income earned from a concert performance because that agreement would not be between the songwriter/artist and the publisher, but rather between the songwriter/artist and a concert promoter.

- **Demo costs:** Publishers try to recoup demo costs by deeming them to be advances in their agreements with the songwriters. A new songwriter could expect 50 percent of demo costs to be recoupable, with as little as none recoupable for a songwriter with a good track record. Other publisher expenses are generally not recoupable at all.

Exclusive Songwriter Agreements

Under these contracts the songwriter agrees to deliver all of the songs written for a certain period of time to the publisher in exchange for a usually substantial advance against royalties. Previously written songs may also be covered if their copyrights have not already been transferred to some other publisher.

Typical exclusive songwriter agreement terms:

- **Royalties:** The base rates and splits are typically structured as in single-song agreements.
- **Exclusivity:** These contracts are *exclusive*, that is the songwriter agrees that no other publisher can have claim to the songs written during the agreement. To put it another way, the publisher says, "Thou shalt have no other publisher before me."
- **Duration:** The term of the agreement is usually for one year with up to four one-year options to extend the agreement for another year. These options are the publisher's. If the publisher wants to keep the songwriter under contract and keep paying the advances, then the publisher may elect to do so after the end of each year. If not, the contract simply ends. Another variation is for the term of the exclusive songwriter agreement to run coterminously with the recording contract if the songwriter is also a recording artist. If the recording contract ended, then the publisher would have the option of ending the songwriting contract. Of course, the publisher usually is able to keep all copyrights in all songs written during the term of the agreement. The obligation to pay royalties on those songs would also continue after the end of the agreement, because

each individual song is transferred for the life of the copyright under a single song agreement as outlined above.

- **Advances:** The primary reason for a songwriter to enter an exclusive agreement is the promise of the publisher to pay a substantial advance against royalties. These advances (sometimes known as a *draw*) usually range from several hundred dollars a week for a new songwriter to thousands of dollars a week for an established songwriter, or a songwriter/artist who is successful. Even songwriter/artists without a recording agreement may get substantial advances if the publisher believes enough in the material and the ability of the songwriter/artist to get a recording contract. Publishing advances for writer/artists tend to be in the neighborhood of \$100,000, and perhaps up to \$500,000 if there is a bidding war going on between publishers.²⁶ Publishers may even go so far as to purchase substantial amounts of recording equipment for songwriter/artists to perfect their craft.
- **Output requirements:** The publisher may require the songwriter to complete a certain minimum number of songs per year, typically twelve to twenty. The songs will usually have to be accepted by the publisher. The minimum may even be stated in terms of commercially recorded songs, especially if the songwriter is also an artist.
- **Collaboration:** Writing with other songwriters is especially important to a songwriter's creative processes and to getting material recorded. Some songwriters take half-finished songs to recording artists and suggest that they finish them together. The result is that the songwriter now is a half-writer of the song with the artist. Half a loaf is better than none, but it is important to make sure that the half-loaf counts toward the minimum number of songs commitment if there is one. It is also important to the songwriter that other collaborators, such as producers or artists who did not really create any of the composition, cannot be added to a song as songwriters without the original songwriter's permission.

Songwriter Royalty Example

Assume an artist has a number one hit. How much money would the songwriter of that song make? As with many such questions in the recording industry, the answer is, "It depends." Several assumptions have to be made before one can even begin to calculate.

- First, it is likely that this song is licensed for mechanical royalties at $\frac{3}{4}$ of the statutory mechanical royalty rate, even if the songwriter is not the artist, because of restrictions on total mechanical royalties in many artist agreements (see Chapter 7 for details). At the 2004

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statutory mechanical rate of 8.5 cents per copy that would equal 6.375 cents per copy. Also assume that the mechanicals are collected through the Harry Fox Agency. It is uncommon for a hit single to sell "gold" (500,000 units), so let's assume successful single sales of 200,000 units. Let's also assume that the album containing the song has sold 500,000 units and is also licensed at a $\frac{3}{4}$ rate.

- Assume that performance royalties are collected and divided by the performing rights organization (PRO; see "Performance Licensing" later in this chapter) and paid 50 percent to the publisher and 50 percent to the songwriter separately. Performance royalties for one year vary greatly depending upon the genre of the music, how long it is a hit, and whether it receives television airplay. One report had performance royalties for a country hit varying by as much as \$80,000 or more depending upon how much airplay even a number one song receives and on what stations. An average figure that is close for all three PROs would be about \$140,000 for one year for either the publisher or songwriter share.²⁷ Another estimate placed royalties for a "major across-the-board chart song" at as much as \$650,000 for a pop song with significant television airplay.²⁸
- Assume a ten-cent, per-copy rate for sheet music and that the song has sold 80,000 pieces. This assumption may be a bit high, because many singles do not have sheet music printed.
- Finally, assume the songwriter is under an exclusive agreement and has been receiving an advance for the past year of \$350 per week, a total of \$18,200.

The advance is added back in to show that it is money that the songwriter actually had received during the year and probably used to live on. That looks like a respectable sum, but most songs are not number one hits. In fact, estimates are that only about 2 to 5 percent of songwriters make \$10,000 per year.²⁹ Also, if the song was co-written with just one other person, then our songwriter would only receive half of the above amount from the various royalties.

Other Copyright Acquisition Methods

Because so many songwriters, producers, and recording artists have their own publishing companies, there are lots of small catalogs of songs (all the songs owned by a publisher constitute its *catalog*) available for possible purchase. Larger publishers often buy these small publishers' catalogs. Larger catalogs of independent publishers are also purchased, typically by the major publishers. In a catalog purchase the

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Songwriter Royalties Example

Mechanical Royalties:	
Single sales: 200,000 units @ 6.375 cents	\$ 12,750.00
Album sales: 500,000 units @ 6.375 cents	31,875.00
Total:	44,625.00
Less: HFA collection fee 5.75%	2,565.94
Net Mechanicals collections	42,069.06
Writer's share @ 50%	\$21,029.53
Print sales: 80,000 copies @ 0.10 per copy	
Gross earnings from publisher	8,000.00
Less: recoupable advance 52 weeks @ \$300	\$29,029.53
Net due from publisher	\$18,200.00
Performance royalties (writer's share paid directly to songwriter)	\$10,829.53
Writer's earnings	\$140,000.00
Plus advance	\$150,829.53
Writer's net earnings	<u>18,200.00</u>
	\$169,029.53

buying publisher usually obtains copyrights to all of the songs in the catalog as well as demos of those songs. The amount paid for the catalog varies greatly and depends on the number and value of the songs included.

Sharing the Publishing

Songwriters or songwriter/artists may be able to keep part of the publishing in their own publishing company and agree to split the ownership of the copyrights with a larger publisher. This is called *copublishing*. The songwriters still get their 50 percent share, and the two publishers split the remaining 50 percent in a negotiated share, often 50/50. The net result of such a deal is that the songwriter gets 50 percent of the revenues, the songwriter's publishing company gets another 25 percent of the revenues (half of the publisher share) and the co-publisher gets the other 25 percent of the revenues. At a minimum, the co-publisher then takes care of administrative duties associated with the songs, such as collection of royalties, licensing, and copyright administration. In addition the co-publisher may actively engage in plugging the song.

Instead of owning a share of the copyright, the larger publisher may be content to make a deal just for a percentage share of the revenues earned in exchange for providing the administrative support for the catalog. These copyright administration deals usually involve catalogs from successful artists and producers and from smaller independent publishing companies. Administration fees charged by the administrative publisher are typically 10 percent to 25 percent of gross publishing revenues. Gross publishing revenues would include the share of songwriter income that flows through the publisher, as well as the publisher share. Administrative deals usually do not last for the duration of the

copyrights renewals.

Exploiting*Income Sources*

Most publishers to use their money (with a few exceptions) They license various income in the various Figure 4.1 three sources sales. Another chronization and home these fashion bring money

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The three exclusive music publishers

copyrights, but rather for a period of three to five years, including renewals.

Exploiting Copyrights

Income Sources

Most publishers make all of their revenue from licensing (permitting others to use) their copyrights. Unlike record companies, which make most of their money from the sale of copies of their masters, music publishers (with a few notable exceptions) do not directly sell copies of anything. They license other people to do that. To develop an understanding of the various income sources for music publishers it is necessary to understand the various licensing arrangements that lead to these income sources. As Figure 4.1 indicates, music publishers earn most of their revenues from three sources: public performances, sale of recordings, and sheet music sales. Another significant source of revenue for some publishers is synchronization fees: licensing songs for use in motion pictures, television, and home video. So, how does one get permission to use a song in any of these fashions? As any publisher would probably say, "No problem, just bring money."

Performance Licensing

Copyrights in songs include the right of public performance. Note that this is not limited to for-profit performances because many nonprofit performances are not exempt by the copyright act (see Chapter 3 for more details). There are tens of thousands of nightclubs, retail stores, radio stations, television stations, and other places where music is performed publicly. The practical difficulties inherent in any single publisher attempting to license all of these outlets has led to the creation of performing rights organizations (PROs) which act as clearing houses for the publishers to license large numbers of performance places and for the performance places to access the thousands of songs of thousands of publishers. There are three major PROs in the United States; ASCAP (The American Society of Composers, Authors and Publishers), BMI (Broadcast Music, Inc.), and SESAC (SESAC, Inc. SESAC is no longer an abbreviation of anything in particular).³⁰ A comparison of the three organizations on various points follows the description of basic performance licensing.

How Performance Licensing Works

The three PROs function in very similar manners. They all acquire non-exclusive rights to license public performances from the songwriters and music publishers that belong to their organizations. The rights are

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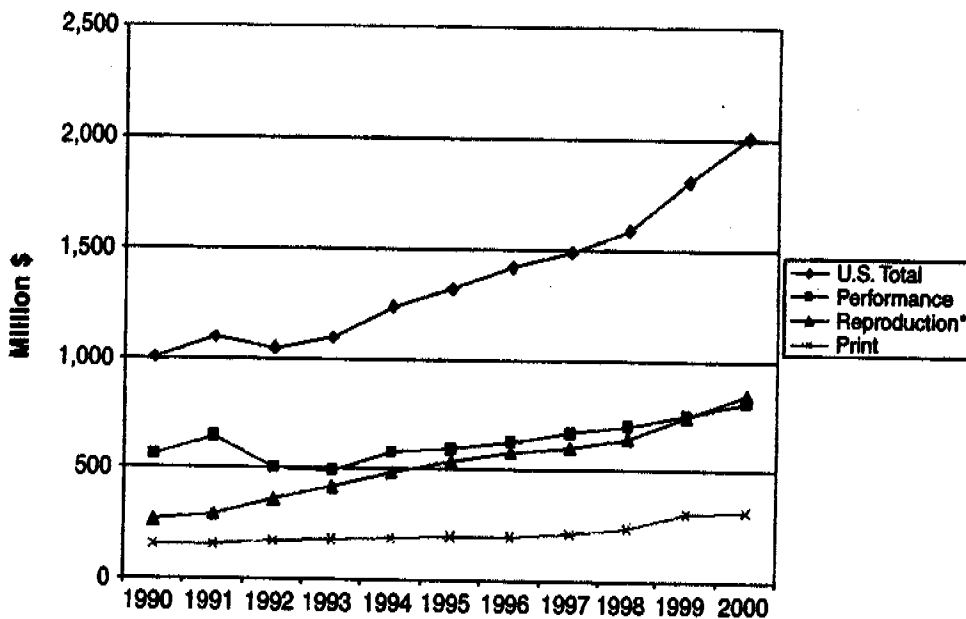


Fig. 4.2 U.S. music publishing revenues (1990–2000). National Music Publishers' Association. *International Survey of Music Publishing Revenues, 1992–2003*.

nonexclusive because the publishers retain the right to license the works directly themselves. The PROs obtain only *nondramatic* performance rights. Dramatic performances, those that involve the performance of more than one composition from an opera or musical theatrical production or that involve the use of the composition to tell a story in some dramatic manner (as on stage or screen),³¹ are licensed directly by the publisher or by a theatrical licensing agency that represents the publisher. Dramatic performance rights are known as *grand rights* and nondramatic performing rights are known as *small rights*. Both the publisher and the songwriter of the composition must belong to the same performing rights organization. Most music publishers of any size operate at least two separate companies, affiliated with different PROs, so that any songwriter that the publisher may sign can be accommodated, whichever PRO the songwriter prefers.

The PROs then issue licenses to anyone and anywhere their music might be performed publicly. (See Chapter 3 for a definition of public performance under the Copyright Act.) Figure 4.3 indicates the flow of the licenses from the initial copyright owners to the licensees, and of the royalties/license fees collected from the licensees back to the songwriters and publishers. For most places where music is performed, the most economical way to obtain permission to use a vast number of songs is to obtain a *blanket license*. The blanket license from a performing rights organization allows the licensee to perform, or have performed under its roof, any of

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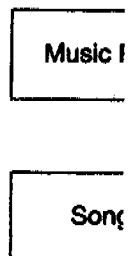


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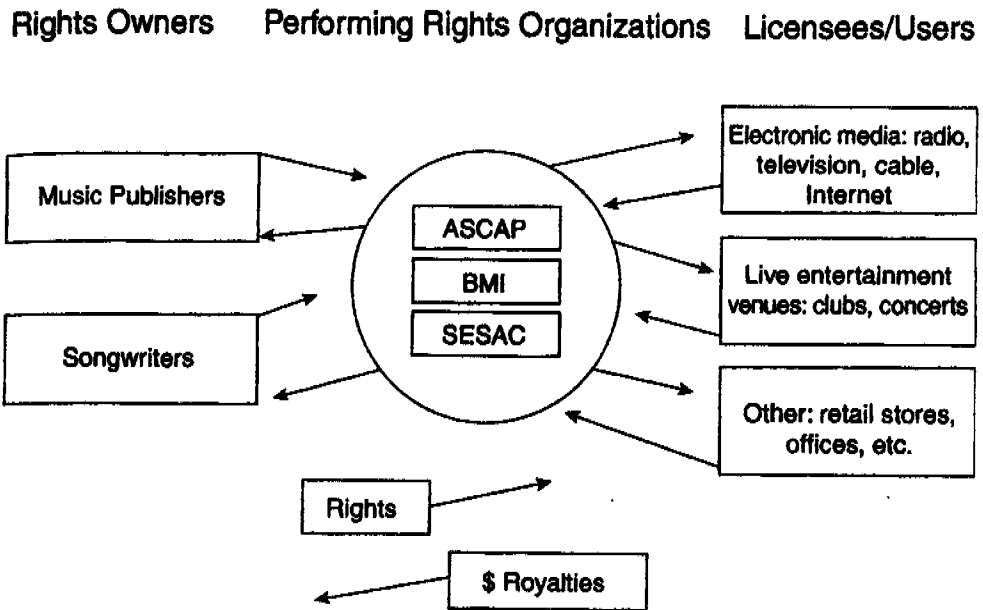


Fig. 4.3 Performance rights licensing.

the compositions that the PRO represents, as many times as desired. Such a license is particularly valuable to radio stations and night clubs where thousands of different songs may be performed, some of them hundreds of times. Keeping track of individual performances would be a real nightmare. The Supreme Court of the United States has even recognized the value of the blanket license. In an anti-trust suit brought against BMI by Columbia Broadcasting System, the Court upheld the validity of the blanket license, saying,

[T]he blanket license developed ... out of the practical situation in the marketplace: thousands of users, thousands of copyright owners, and millions of compositions. Most users want unplanned, rapid, and indemnified access to any and all of the repertory of the compositions, and the owners want a reliable method of collecting for the use of their copyrights. Individual sales transactions in this industry are quite expensive, as would be individual monitoring and enforcement, especially in light of the resources of single composers. ... A middleman with a blanket license was an obvious necessity if the thousands of individual negotiations, a virtual impossibility, were to be avoided.³²

The PROs must also offer a per-use or per-program license to those users who wish to take advantage of it. Per-use or per-program licenses are more costly on a per-song basis, but may be less expensive overall than a

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blanket license if a broadcaster, particularly a television broadcaster, only needs access to a very limited number of clearly identified compositions on a regular basis.

Who Obtains the License?

Although technically speaking the actual musician performing a song live in a club would be liable for the public performance, it is the operator/owner of the venue who is obtaining the benefit of the performances and is also liable for copyright infringement if there is an unlicensed performance. As a practical matter, it is much easier to license the premises than to license a bunch of traveling musicians. Therefore, owners of nightclubs, radio and television stations, retail outlets where background music is being played, and concert venues (or the concert promoter if the venue does not have much music performed during a typical year) all must have performance licenses to cover the compositions performed in their establishments. An exception to the public performance right allows many retail stores and food and beverage establishments to play radio programs over speakers in their establishments without having to obtain a license. (see Chapter 3 for more detail).

How Much Is the License?

The cost of the license depends upon a number of factors. Background music licenses cost less than live entertainment licenses. Live entertainment licenses cost less than broadcast performance licenses. The bigger the operation in terms of physical size, number of seats, amount of music being performed, power of transmitter, and other factors, the more the license costs. A small retail store playing recorded music might obtain background licenses for a few hundred dollars per year. A major nightspot, such a casino in Las Vegas, spends tens of thousands of dollars per year. A television network spends millions of dollars per year for broadcast performance licenses. All three PROs deduct their operating expenses from the available pot of money; SESAC takes an additional profit for their owners.

Who Gets the Money?

The PRO collects the license fees from all of the various users then attempts to determine how much money each song in the PRO's repertoire is entitled to receive. This daunting task is accomplished somewhat differently by each PRO (see below). Suffice it to say, however, that the best any of the PROs can do is get an exact count of performances from some licensees, such as the television networks; get a sample or actual *spin count* of a larger group, such as local radio stations; and use those as an estimate of

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what songs were performed live in clubs, discotheques, and as background music. The various methodologies are the subject of great debate among the three organizations as to who does the best job of accurately paying their publishers and songwriters. The methodologies all have their merits and shortcomings and no one is perfect, or will ever be perfect because of the virtual impossibility of monitoring all songs played live in clubs. Nightclubs and other live performances account for about 26 percent of performance license fee collections (see Table 4.1).

Once the amount to pay for each song is determined, the PRO divides the payment in half and sends half to the songwriter and half to the publisher. If there are multiple songwriters or multiple publishers then the PRO divides the money according to the directions supplied by the songwriters and publishers. If a songwriter specifically instructs the PRO to pay the songwriter's share to the publisher, perhaps because the songwriter is a staff songwriter who has a significant advance to be recouped, the PRO will do so.

Comparing ASCAP, BMI, and SESAC

- *Organization:* ASCAP is a non-profit organization run by its members—the publishers and songwriters. BMI is a corporation owned by broadcasters but which operates on a non-profit basis. SESAC is a privately held corporation that operates on a profit-making basis for its owners (who are not the songwriter or publisher affiliates).
- *Size:* BMI claims to represent 300,000 songwriters, composers, arrangers, and publishers; ASCAP boasts 145,000 members. SESAC, though clearly the smaller organization with 2,700 affiliates, has become much more aggressive in acquisition of songwriter catalog in recent years, notably with acquisition of licensing rights to Bob Dylan's and Neil Diamond's catalogs.³³ ASCAP reported receipts of \$560 million in 1999 and distributed \$435 million to its songwriter and publisher members.³⁴ BMI states its 1999 collections as \$450 million. SESAC does not publicly report its annual receipts but they were estimated at about \$8 million before their significant rights acquisitions of the Dylan and Diamond catalogs.³⁵
- *Kinds of music licensed:* Initially SESAC had a stronger hold in Latin and Gospel music, ASCAP in "standards" because they were the oldest organization, and BMI in country, R&B, and rock. Now all three organizations compete well in all genres.
- *Online clearances and licensing:* All three organizations have online listings of their repertoire. All three have some performance licenses available online; some are click-through, and some are simply downloadable. They also allow online clearance of songs by users and listing of new songs by their affiliates using their pages on the World Wide Web.³⁶

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- *Logging methodology:* Logging is the method used by PROs to determine which songs are being played most frequently, and becomes the basis of how the license income is split among composers. A detailed discussion of logging is beyond the scope of this text, but important recent changes in methodology for all three PROs indicate that more music from more diverse sources and voices is being logged and paid royalties. All three organizations have been expanding the scope of their sample and improving its accuracy in recent years. For example, ASCAP began actual monitoring of live performance venues and getting song logs from the top 100 touring acts.³⁷ BMI added college radio stations to its list of stations completing logs. SESAC increased the number of radio formats for which it receives actual airplay information from BDS (Nielsen Broadcast Data Systems) and moved to a "watermarking" system to identify radio airplay in 2001.³⁸ BDS monitored more than 1,200 stations in the United States and Canada in 2003, including some in nearly every format. ASCAP used BDS and then partnered with a similar system in 2003.³⁹ All of these changes mean that more songs will be logged and paid for their performances. This means that not only mainstream hits will be logged, but also songs by artists who either do not receive much airplay or who receive airplay on small stations, or less popular formats. This in turn increases the prospect for non-mainstream songwriter/artists to collect performance royalties for their songs and increases the possibility that they can sustain a career.

Broadly speaking, all three PROs get actual program logs from television and radio networks that provide a numerical census of airplay. ASCAP *samples* most local TV and radio by actually recording broadcasts and deciphering which songs have been played. BMI *samples* by requiring all of its broadcast licensees to complete an actual log, accounting for every song played, once per year for one week. SESAC was the first to use the BDS to obtain actual counts of which songs were performed on stations monitored by BDS and combines that with other information to make their best estimate of performances. Because BDS does not monitor all radio stations (about 10 percent of the more than 13,000 stations in the United States) this too is a sample. All of these methods still only provide an estimate of the total number of actual performances for any given song. Some song performances will never be logged. Other songs may have their performances overrepresented in the sample because they are mainstream hits and are performed in all markets. The PROs attempt to adjust for these shortcomings in their methodologies, but none of the systems is perfect.

- *Age:* ASCAP was founded in 1914 to begin to develop a way for U.S. composers to collect for live performances of their songs. SESAC was

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founded in 1930 primarily to license European composers' music in the United States. BMI was founded in 1940 to provide broadcasters with music to play when they refused to agree to pay the fees demanded by ASCAP in the 1940 license negotiations. If they refused the ASCAP license they could not play any of the popular songs licensed by ASCAP. That sent the broadcasters scrambling to get performance rights for country, blues, and anything else that they could play to fill their programming.

- *Payments:* The three organizations debate long and hard about which will pay the most money. There are situations in which either might pay more for a given song than the other two depending on where and how often it was performed. A comparison of average payments on hit songs revealed that the three were within about a seven thousand dollar range of each other out of an average songwriter share of about \$140,000. However the PROs reported a range from a low of \$114,000 to a high of \$194,000 for recent hits (country).⁴⁰ These three organizations compete to sign songwriters and publishers and aggressively pursued previously unlicensed users into the twenty-first century, but the share of publishing income from performance licensing increased only 62 percent, compared to the 127 percent increase in mechanical royalties between 1992 and 2000 (see Table 4.1).

Mechanical Licensing

Although the Copyright Act allows a record company to procure a statutory (compulsory) license to record a musical composition (see discussion in Chapter 3), most labels prefer to obtain negotiated licenses from the publishers. The National Music Publishers' Association (then the Music Publisher's Protective Association) established the Harry Fox Agency (HFA) in 1927 to provide a clearinghouse for mechanical rights for the rapidly growing sales of recordings and piano rolls in the 1920s. Now the HFA issues and collects for about three fourths of the mechanical licenses in the United States.⁴¹ By 2003 the HFA represented the catalogs of more than 27,000 music publishers and has annual collections of more than \$500 million. The agency charges the member publishers collection fees of 5.75 percent of mechanical royalties collected. In addition to collecting the fees from the record labels and distributing them to the appropriate publishers the agency conducts audits of its licensees on behalf of the members. The HFA reported audit recoveries of \$12 million in 1994.⁴² As indicated by Figure 4.4, these collections are distributed to the publishers, who then divide them with the songwriters according to their contractual agreement, usually 50/50. The HFA allows potential licensees to obtain licenses electronically via their World Wide Web site, especially for productions of less than 2,500 copies.⁴³

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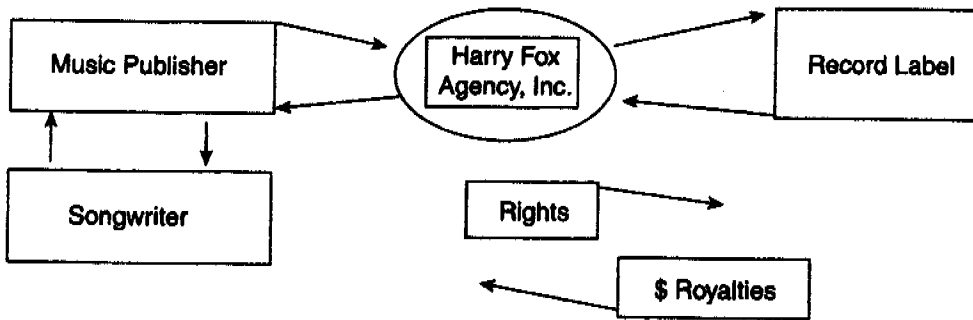


Fig. 4.4 Mechanical rights licensing.

Mechanical Rates

Although most mechanical licensing is not through the statutory compulsory license, the rates tend to follow the compulsory amount. Because a large amount of the compositions licensed are by songwriter/artists and because these people tend to have controlled composition clauses in their recording agreements (see discussion in Chapter 6), most licenses are for $\frac{3}{4}$ of the statutory rate. The HFA states that it will not issue mechanical licenses at a rate below the statutory rate without instructions from the publisher, but publishers are often willing to do so, especially when songwriter/artists are involved. The net result is that typical mechanical license rates in 2002 ranged from 6.0 cents per side to the full statutory rate of 8.0 cents per side. The increase in statutory mechanical rates beginning in 1978 from 2.75 cents (it had been 2.0 cents since 1909) to 8.0 cents in 2002 represented a 191 percent increase, somewhat ahead of the 175 percent increase in the consumer price index for the same period.⁴⁴ Total mechanical royalties collections for the same period increased from \$148.5 million to \$691.5 million, a 366 percent increase. The growth of total mechanical royalties at a rate greater than inflation is accounted for by the real growth in sales of recordings during that time period as indicated in Chapter 1. Figure 4.2 indicates the rapid growth of mechanical royalties compared to others between 1990 and 2000. Performance income increased from an estimated \$238 million in 1978 to \$812 million in 2000, a 241 percent increase, also ahead of the inflation rate.⁴⁵

Print Publishing

Structure

Total print music publishing sales worldwide amounted to about \$770 million in 2000. About \$350 to \$400 million of that is sold through record stores according to the American Music Conference.⁴⁶ Most music publishers, even some of the largest, do not manufacture and distribute print

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editions of their own songs. Some do not even license print editions of their songs at all. Nearly 25 percent of the top 100 hits do not even appear in print editions.⁴⁷ Economies of scale in manufacturing and distribution have collapsed print music publishing into a highly concentrated industry with only four major players. They are the Hal Leonard Corporation (an independent), Warner Brothers Publications (the print division of Warner/Chappell Music, which is owned by the Warner Music Group), Cherry Lane Music (an independent), and Music Sales Group (a U.S. company with publishing and retail interests in the United Kingdom). A fifth player, CPP-Belwin (formerly owned by Columbia Pictures), was purchased in 1994 by Warner Brothers Publications after Warner lost the EMI Music print rights to Hal Leonard.⁴⁸ EMI Music, arguably the world's largest music publisher, has its print publishing done through Hal Leonard as do Paramount's Famous Music, Disney, Universal, and BMG. The print music oligopoly is even tighter when the songs considered are current hits. The two giant print publishers, Hal Leonard and Warner Brothers Music (individually and in some cases jointly) control roughly equal shares of the sheet music for hit songs.⁴⁹ It is unusual to see any other print publisher with sheet music rights to more than one or two songs in the top 100.

Print Licensing

Print publishing income amounts to only about 16 percent of total publishing income (Figure 4.1), but the United States has a significantly higher percentage of worldwide print income (over 40 percent) than it does of other publishing revenues (see Table 4.5). The print publisher typically agrees to pay the music publisher as follows: 35 to 50 cents per copy for sheet music (piano/vocal) if a penny rate and 20 percent of the suggested retail list price (SRLP) if a percentage royalty; and 10 to 15 percent of SRLP for folios (pro-rated based on the number of songs the

TABLE 4.5 U.S. Share of Worldwide Publishing Revenues, 2000
(U.S. Dollars in Millions)

Source	Worldwide (\$)	U.S.A. (\$)	U.S.A. (%)
Performance	3,076	812	26.4
Phono/Mechanical	1,995	691	34.6
Synchronization	670	157	23.4
Print	769	316	41.1
Other*	367	31	8.4
Total	6,877	2,007	29.2

* "Other" includes broadcast mechanicals, private copy, reprint, rental, interest investment, and misc.
Source: National Music Publishers' Association, Inc. *International Survey of Music Publishing Revenues* (2003).

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particular music publisher has in the folio). The print publisher may have to pay an additional 2 ½ to 5 percent for the right to use the recording artist's name on a personality folio that is keyed to a particular artist or album. Print rights are usually granted on a non-exclusive basis to the print publisher with the duration of the license being three to five years.⁵⁰

Synchronization rights

Synchronization rights refer to the right to use music, as the contracts often put it, "in timed relation to visual images." In the early days of attempts to accompany motion pictures with sound, recordings were played while the motion picture was being played and elaborate devices attempted to keep the sound synchronized with the screen action. When the sound became integrated on the film on a separate track, it still had to be synchronized because the sound had to precede the image with which it was associated in order for the viewer to perceive the sound as originating at the correct time from the screen. Synchronization rights must be obtained for film, television, and videogram (home video) uses. Licenses are highly individualized depending upon the nature of the use of the song in the film (is it a theme, or featured as in a performance, or simply background), the amount of the song that is used (a few seconds or entirety), and the stature of the song (is it a recognizable hit or a new song that might benefit from exposure in the film). For example, synch license fees for a major studio film would be anywhere from \$25,000 to \$50,000 up to \$150,000 if the song is the main title song for the film. Uses in commercials may run anywhere from \$75,000 to \$500,000 for a one-year use. Television program synch licenses will run from \$1,500 to \$10,000 per episode, all depending upon the nature of the use and the popularity of the song.

Songwriting

Great songs are about people's hopes, dreams, and aspirations.

—Bill Lowery, owner Lowery Music Group⁵¹

Because, as some people say, "It all begins with a song," why consider songwriters last in this chapter? Because all of the issues already discussed have implications for people who want to write songs. With rare exception, the songwriters of pop, rock, and R&B hits tend to be the people who perform or produce them. Even in country music, being a "just plain songwriter" is becoming increasingly difficult; a connection with an artist or producer is extremely important. A connection with a music publisher is also extremely important; most publishers will not accept unsolicited

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demos of songs. To get that contact at the publisher, songwriters can perform in showcases, perform in clubs, work through a performing rights organization, or just plain knock on doors. A songwriter will have to do these things someplace where a publisher is likely to hear them. Writing with a songwriter who already has songs placed with a publisher is also a quick track to the inside.

As to song content, we have all heard songs on the radio that we think are not very good. Perhaps they just do not communicate with us personally. Perhaps they do not communicate very well with *anyone*. Those songs may not be well crafted in terms of lyrics and structure. The craft of songwriting can be learned. There are numerous books on the subject.⁵² The songwriters' organizations in major cities often have songwriters' workshops, as do the performing rights organizations. Two important organizations for developing professional songwriters are the Songwriters Guild of America, and the Nashville Songwriters Association International.⁵³

The important thing is to write often and to get feedback from somebody who has some background or experience that qualifies them to judge songs. It is difficult for many songwriters to accept even constructive criticism because the very nature of the early stages of songwriting is that the songs become highly personal statements. There is not much point to complain, "Well, they are *my* songs and I don't care if anybody else will understand them." If that is the songwriter's real perspective, then they need not be trying to get a publisher or label interested in the songs. If, however, the songwriter would like to use the songs to communicate or share ideas or feelings with a broader audience, then the use of popular music as a communication medium is appropriate. If a songwriter or artist asks others to invest time and money in their message, then the investors need some reasonable assurance that the song or recording stands a chance of recouping the initial investment (i.e., that it is reasonably commercial).

Songwriting is both art and craft. While it is easy to write a song, it is difficult to come up with a song that is well crafted and has enough appeal to get an artist to feel that it could be a hit. Country songwriter Will Rambeaux put it this way: "It takes years to develop that craft to the point where you're writing songs that are good enough for the radio. I know that sounds simple and shallow, but it's not easy to do that, to write songs that have universal appeal."⁵⁴ Few songwriters have ever managed to accomplish that as well in modern times as Diane Warren. She is not a recording artist, or a producer, yet she has songs recorded by artists in nearly every genre, in motion pictures, and television. She says a good song is "Something that touches you, makes you feel something."⁵⁵

Summary

The music publishing stream begins with the acquisition of songs, and the copyrights in those songs, from songwriters—whether independent

writers, or recording artists who create their own material. The labels have become prominent players in this stream because recordings generate the lion's share of revenues from reproduction (mechanical rights) and public performances of these songs. Important licensing agencies are the Harry Fox Agency for mechanical rights, and the performing rights organizations, ASCAP, BMI, and SESAC. Even though the roughly \$2 billion music publishing stream is not as large monetarily as the live entertainment or recordings streams, without songs to perform and record the other two income streams simply would not exist.

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