

Music business essay



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The music publishing industry at a glance would seem to be those who print sheet music, method books, lead sheets, and all of the texts or notated music that musicians (and those aspiring to be musicians) use. Years ago, this was what most music publishers did, but as the industry has evolved the process that become much more complex. Music is not just ink and paper, intellectual material and property to the individual who writes it. Therefore the song does not become a song when it is written down. This is not an easy concept to grasp because the song by itself has no physical makeup. A song could exist once it is played for the first time, and songs can even exist inside the mind of a songwriter. This concept is why the publishing business can be so complex; we are dealing with intellectual property.

The heart of the music publishing business lies in the rights to the original music. After the music is successful enough to financially support itself the music is printed in mass quantities in a variety of ways. This could be everything from guitar tabs to choral arrangements for a junior high choir. The publishers main source of income is through record royalties, performance royalties received from companies like the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music Incorporated (BMI), and the Society of European Stage Authors and Composers (SESAC) for performances of music copyrighted by the publisher. These royalties could be from many different types of performances but most are through radio and songs on television. The success of a songwriter lies in the greatly in the hands of his/her publisher. Normally we hear of a bands success when they are signed with a record deal, but most record companies not only produce and promote an album, they also act as the publisher who, when

contracted, owns the rights to the music. When a publisher own the song it is put in to their catalog. Merchandise retailers have catalogs of their goods just like publishers have a catalog of songs that they own rights to.

Publishing firms such as Warner/Chappell, BMG Music, MCA Music, and Sony music have catalogs of many styles of music. These companies are referred to as full-line companies. A broad repertoire allows them to market their music to many audiences. Most of these full-line companys roots can be traced back to the music of Hollywood and the show music of Broadway. Publishers today may have thousands of songwriters in its catalog including all styles of music from around the globe. Representative Warner/Chappell owns, administers, or sub-publishes more that a million copyrights here and abroad.

Today's full-line publishers have many different divisions to their company. Large publishers handle virtually every aspect of a writers music, its recordings, distribution, sales, promotion, advertising, touring, and legal affairs. This figure lays out all the divisions a full-line publisher may have.

The administration division is the division that handles the operations of the firm. All business affairs go through administration. When money is received from or paid to customers the firm the accounting divisions keeps all the financial records of these kinds of operations. The accounting division also would handle loans given to artist that are signed to the firm under the publishers record label. When a band records an album under a label they become a liability to the label because money has to be spent to record, produce and promote a artists music. Full-line publishers front this money and all profits from the artist come back and are split 50-50 with the

publisher and the writer. If the artist maintains the rights to their songs the record contract will include a controlled composition clause that calls for a reduced mechanical royalty paid to the artist by the record label. This clause may reduce the royalty split to 75-25, the larger portion going to the record label. This clause would not be insisted to artists who place the full rights to works in the hands of the record company's publisher. The artist remains a liability to the publisher as long as the artist has not made as much money as was invested into them by the publisher. An accountant usually handles the royalty department, which is money received from performances of the copyrighted music. This financial person will also handle normal operations such as payroll, accounts payable/receivable, insurance, purchasing and other financial operations.

The copyright department may have one or more people in this division. This department is responsible for a number of tasks. Some of these important tasks are to:

1. Conduct a title search. The copyright department first determines who owns the work. Just because an artist claims to have written a song does not give him rights to it. This may be a complicated process, which is why many publishers stay away from music that is sent blindly to them for review.

Legal disputes between the publisher and the writer could result and end up in court, which can be a long and costly process. Other issues that add to the complication are co-authors to the music, previous publishers, revision to music or lyrics, and many more. When the copyright department has performed this research, a copyright attorney can answer remaining

questions. Depending on the demand of this type of attorney to the firm, the firm may hire one full time for these affairs.

2. Registering claims of copyright. This is done to make the copyright official, which may cost about twenty dollars for a song.

3. Handle the mechanical, and synchronization licenses of the music.

Mechanical licenses are issued to artists for the recording of a copyrighted work. Synchronization licenses are issued for the use of copyrighted works in films. This may be done through the Harry Fox agency, or may be handled through the copyright department.

4. Keeping current records of all copyrights owned by the publisher. This includes the renewal, extensions, sales, or abandonment of existing copyrights. Copyrights do have a time limit, so the need to watch where they stand in time is important to the life of the work.

There may be a specific department for business affairs that deal with the legal operations of the firm. The publisher may have staffed lawyers and attorneys in this department that study the copyright laws and take legal action for the breaking of copyright laws, or the negotiating of new laws. If the publisher does not have the demand for a full time lawyer or attorney, they may be hired from outside firms.

The acquisitions division is responsible for contracting writers and purchasing other catalogs. A representative from the publisher may travel the country to find artists that would bring more business to the firm. Like scouts this person is in charge of artists and repertoire (A & R). The A & R

representative may attend a major event by an artist to see them perform and evaluate whether they would be profitable for the firm. Remember that the publisher splits all profits 50-50; millions of dollars may be at stake at the success of one artist. The acquisitions department is responsible for the purchasing of catalogs of smaller firms. This makes the music publishing industry an oligopoly; an industry controlled by a few large firms.

The print publishing division is responsible for tasks such as editing, engraving, artwork, copying, and the printing of its catalogs music. The signed artists may meet with the editors, and arrangers in this department to prepare the music for printing in a number of different ways. The music would simply be transcribed to a lead sheet, or an entire album could be published in a book with all the chords and guitar tabs for aspiring musicians to purchase. After the music is printed it is then distributed.

The promotion division is often the largest of all the divisions in a full-line publishing company. The success of a work is held in the hand of the promotion of the artist and their music. Even artists that do not have outstanding talent or abilities, but have excellent promotion will have more fame than the talented unadvertised artist. The people in charge of these artists' success are the producers, managers, and musical directors for not only the records they produce but also the performances they give.

Producers in the recording studio deal with the quality of the music and how it sounds to its audience. The musical director may also be present to make decisions about the arranging of music during the recording project. The artist's manager is responsible for the personal well-being of the artist. The other departments involved in promotion are responsible for print ads, store

displays for the album, direct mail to retailers and fans, and any other special events.

After all the acquisitions, administration, print production, and promotion divisions have performed their responsibilities, the distribution division takes control and begins to put this intellectual, funded, copyrighted, recorded, printed, promoted music into the hands of consumers. The distribution and sales division distributes the CDs, tapes, sheet music, T-shirts, and other merchandise to wholesalers and retailers of the products. These vendors buy in large quantities at wholesale prices. Another distributor of sheet music known as a rack jobber deals with small quantities of music usually less than one hundred at a time. Other distribution may be done through direct mail, catalog and online sales.

The final division of the full-line publisher is the subpublishers and licenses. Most publishers will contact different tasks to other publishers who may specialize in print or other services necessary to the artist but not provided by the primary publisher. The most common service performed by subpublishers is printing. Companies like Hal Leonard, Inc. and Warner/Chappell are two of the largest print publishers. In these kind of contracts the printer acts as the licensee and bears the full cost of printing and distributing while the licensee pays the licensor a royalty on sales of up to twenty percent of the wholesale cost. In this situation the licensee acts as selling agent.

The administration, acquisitions, print production, promotion, distribution and sales, and subpublishing all make up these full-line publishing firms

industry. Some companies may specialize in a certain areas, but all are necessary to make money in the end. When we see a piece of printed music, or a CD by a famous artist, we can now see that getting that into our hands did not happen overnight, but through the hundreds of man hours put into making that artist successful we are able to share in the intellectual property thousands of songwriters all over the world.

In the following paragraphs I will discuss the types of music uses in reference to the appropriate music license.

The commercial broadcast of non-dramatic music would include the use of music for radio stations, most television station, as well as broadcasting networks. The type of license required for the use of this kind of music is a performance license. The performance rights associations ASCAP, BMI and SESAC are responsible for the collection of these royalties. Radio and television stations pay royalties calculated by a per-song basis or a percentage of gross income. Other broadcasting of music that requires a performance license may include restaurants, clubs, and background music services. These types of licenses could be a one-year blanket license that is a one-time fee. The rate of the license is dependent on a few things such as:

3. The number of hours of entertainment provided.

4. The gross income of the facility.

The owner of the rights to the song issues the license. ASCAP, BMI, and SESAC all have different songs that they are responsible for collecting

royalties for. Most places obtaining licenses for commercial broadcast of non-dramatic music pay royalties to all three organizations.

Nonbroadcast performance of non-dramatic music also requires a performance license. This type of music would be anything that is not broadcasted outside of the actual performance. An example of this would be a bar or club with live music. The music is provided to entertain customers so that they will stay and continue to buy food or drinks provided by the venue. The live music makes the venue money, so a license is required to allow the writer and publisher of the music to make money for the song that they own the rights to. The band performing the music is not responsible for paying for this performance license; the venue is responsible for this expense because they are the ones benefiting from the live music. The only case that a band would require a license is if they are producing the show and making the money by performing another artist's music. Colleges usually pay a blanket license allowing them to have bands perform on their campus without purchasing a license each time. However, if the act is a national act a special license is required. Like commercial broadcast music, ASCAP, BMI, and SESAC are responsible for collecting these royalties and the owner of the rights to the music would issue the right.

Phonorecords, audiocassettes, compact discs, videocassettes, and videodiscs sold for private use require a compulsory or negotiated mechanical license. A compulsory license is issued in a situation where the rights owner does not initially grant the permission for the song to be recorded. This license is more expensive than a negotiated mechanical license. The negotiated license is discussed between the rights owners and the person wanting to record the

song for their own private use. This may be a very inexpensive license, or simply granted permission. There would be no royalties involved due to the private use of the work.

Music video production used for broadcast for cable television requires a synchronization license and a performance license. The synchronization license is issued for the right to use music that is timed to synchronization with, or relate to, the action on the screen. Video production requires this license. Because the music is broadcasted a performance license is required. ASCAP, BMI and SESAC also have contracts with MTV, HBO, and USA that collect royalties from these stations for the use of music on their television stations. The issuer of these license are the owners of the rights to the works. Generally, the owner of the rights to the music in a film is the film producer, not the composer.

Movie, music video, other video software sold or rented to individuals for home use requires a synchronization license that includes license to mechanically reproduce copies for sale. The issuer of this license is the producer or owner of the rights to the work. Again, generally the film, video, or software producer owns the rights, if the composer withholds those rights, the composer must issue the license. ASAP, BMI, and SESAC handle the payment of these royalties.

Motion picture for theatrical exhibition requires a synchronization license that includes a right to exhibit. The producer of the motion picture issues this license and the royalties are handled by ASCAP, BMI and SESAC.

Broadcast commercial requires a negotiated license issued from the publisher. These are some of the highest earnings from special use permits. A commercial advertisement will pay thousands of dollars for the use of a popular song on a broadcasted advertisement. In these licenses the advertiser can usually alter the words to suit the product. If the music is composed specially for a commercial the composer can grant a buyout deal giving the advertiser unlimited usage of the music. ASCAP, BMI, and SESAC would collect the royalties from music used under a special use permit.

Merchandising tie-ins, computer software applications are a negotiated license issued by the publisher. These are similar to broadcast commercials however, there may be no way of tracking times played so a one-time fee may cover the entire license and no royalties collected.

Business music provided by companies like Muzak, require a transcription license issued by the publisher, the Harry Fox Agency or SESAC. The types of uses would be music provided in shopping centers, in-flight music, or hotel elevator music. The collection of royalties is negotiated with ASCAP, BMI, and SESAC.

Dramatico-musical production requires a grand right or dramatic right license negotiated with the copyright owner. These types of uses are for music used in a production where the music plays an integral part in the plot and carries the drama forward. Broadway show and similar productions fall into this category. The shows composer receive the royalties from ASCAP, BMI, and SESAC for this type of use.

Public broadcasting station and jukebox use require a negotiated license.

PBS is a television station along with Public radio that negotiate fees with the publisher. ASCAP, BMI, and SESAC collect any royalties. The jukebox operator negotiates fees with the copyright owner. The Jukebox License Office contacts the jukebox operators and offers them one blanket license to cover ASCAP, BMI, and SESAC.

The last type of music is in use with cable television. A compulsory license or negotiated license is issued by the Copyright office for secondary transmissions use. The Copyright office then distributes this money to the copyright owners. Rates are set and periodically reevaluated with the assistance of a Copyright Arbitration Royalty Panel (CARP).

The Copyright Act of 1976 was implemented with the intent to minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices. The act has seven essential provisions that cover almost every aspect of copyright law. It was also designed open-ended to allow it to change and be amended to change with this growing industry. This act applies to every part of the music industry from recording to publishing. The songwriters benefit greatly for a few reasons. One, the duration of copyright was lengthened to the authors life plus seventy years. This allows a songwriter to continue making money even past his death in which the money would go into his estate. This ensures writers that they will be generously compensated even when they are not able to reap the benefits themselves. Section 101, work made for hire, is very significant to composers, publishers, and movie producers. When a composer is writing on

a work-for-hire basis, the employer is under law as the author of the creative work. Thus, the employer owns the rights to the work.

Another policy that will apply to songwriters is the periodic reexamination of policies and rates of music licenses. This ensures that as the industry grows and evolves to new places, that if a situation arises where they are at a disadvantage because of old law, the policy will be in review for change. In the same manner the music publishers share similar benefits to the songwriter. The publisher and writer are on the same level when they sign the contract agreeing to share profits 50-50. The greatest part of this act is Section 106, the Exclusive Rights in Copyrighted Works. Six exclusive rights are given to the owner of copyrights including (1) the right to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work. This allows the owner to expand the uses of their work outside of the original use. (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The freedom to distribute and copy their own works makes it possible for not only the artist to be successful, but also the publisher along with the affiliated record label, and distribution companies. (4) In the case of literary, musical, dramatic, and choreographic works to perform the copyrighted work publicly. This right makes the continuation of the performing arts possible. (5) In the case of literary, musical, dramatic, and choreographic works to display the copyrighted work publicly. (6) In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission. The Internet is the way of the future in a big way in the music industry and this

exclusive rights leaves it open to change in the digital domain. The provisions that apply to the songwriter also apply to the publisher and all the divisions of the full-line publisher. The recording industry is fighting one of the biggest disputes in music history because of the way that our industry is changing with the evolution of the Internet. Napster, an Internet site that acts as the middleman for the sharing of music over the web. Napster claims that they aren't responsible for the rights not being paid for this shared music because they do not actually touch the music. They provide a way for one user to look into another user's personal computer and download audio files from their computer for free. Napster is facilitating the stealing of this music by providing this open door to users and bypassing the paying of rights to the artists and publishers of the music. The policies of music licenses being reexamined will allow the law to shape to this dispute and pay those who own the rights to the music.

In this subject we also include the fair use of copyrighted material. The law gives guidelines to what is considered fair use for this material. The act lists the criteria for a fair use that includes:

1. The purpose or character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole

4. The effect of the use on the potential market for or value of the copyrighted work

There are exceptions to certain performances that are included in the fair use portion of the act. (1) The performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution.

(2) Performance of a nondramatic literary or musical work, display of work, by or in the course of transmission.

These two uses allow students to study music for more than a hobby, but for a preparation for their careers upon graduation. This is a great resource for colleges to be able to teach and perform music and art for free as a fair use.

In the music industry there are three organizations that dominate the performance rights collection. These organizations are responsible for collecting royalties from clubs, concert halls, stadiums, bars, colleges, airlines, or any business or group that uses music to promote business for themselves. The money collected from these businesses is dispersed to publishing companies that split the profits with the songwriter. These performance rights organizations will take legal action against the venues that do not purchase the appropriate licenses for the uses of the copyrighted music. Some examples of licenses include mechanical, performance, special uses, synchronization and grand rights.

The first performance rights organization established in 1914 is the American Society of Composers, Authors, and Publishers (ASCAP). ASCAPs income is derived from the following places in the music industry:

1. 20% to 25% from reciprocating foreign licensing organizations.
2. About half from television stations and networks
4. Annual fees are figured on a small percentage of the adjusted gross income

Membership of ASCAP is comprised mostly of composers and lyricists of Broadway shows, movie musicals, and pop songs. To become a member of ASCAP you must have at least one song commercially recorded, available on rental, or performed in media licensed by the society. ASCAP has a board of twelve writers and twelve publishers.

In weighting performances ASCAP takes into account the following:

1. The medium in which the performance takes place
2. The weight of the station on which the performance is carried
3. The weight of a television network

The organization pays its members on the basis of census and sample surveys of performances. These are usually done at random at places that have commercial airplay. The data is then figured on an average and royalties are paid based on the average.

Broadcast Music Inc. is set up different from ASCAP in its financial structure. BMI is owned by stockholders. Its board of directors consists of those who own shares in the company; several hundred people. The affiliates of BMI are songwriters from genres including jazz, rhythm and blues, country, rock, gospel and much more. Unlike ASCAP, BMI has no members, but has writer and publisher affiliates. BMI accepts those who have written a musical composition and have recorded or performed the work commercially. BMI pays higher for songs that originate in a Broadway show or feature film. As the song is play or performed more the copyright owners receive bonus payments of up to four times the minimum rate. BMI has many foreign writers and publishers in Europe and relays on income from overseas greatly. BMI does withhold 3.6% for servicing foreign accounts. BMI deals with most licenses, as does ASCAP.

The Society of European Stage Authors and Composers (SESAC) is the third of the performance rights organizations. SESAC is the smallest of the three organizations. They believe that by being a smaller organization they can meet the needs of their writers and publishers better than the bigger organizations. The other side to this is that it is much more costly to the copyright owner to join with SESAC. SESAC is the technological leader among these organizations. They have a state-of-the-art tracking system which allows them to accurately track the performance and recording of works by its owners. SESAC uses a chart payment system, which makes royalty payments based on chart positions in major trade publications. Unlike ASCAP they do not have a weighing system. The success of the song is based on how high up on the chart it is. ASCAP and BMI operate under court consent

decreases; SESAC does not. Each of these organizations has their own strength, and all three are important to the industry.

Working musicians can become members of unions and guilds that are respected around the nation. There are many benefits to being apart of these organizations. At a glance one may not like the idea of paying yearly dues to a group of musicians, but the benefits can be immeasurable in the right parts of the country. The American Federation of Musicians (AFM) is a trade union. It is the oldest union in the United States representing musicians that are active in their professional career. Over the year this union has seen decrease in numbers because of difficulty in attracting new young members and state and national laws restricting certain kinds of collective bargaining. The union dues can range from one to five percent of union scale wages earned by its members. These dues are used to finance activities all over the nation and locally. The Union provides these musicians with the proper treatment and paid work. Most symphonies are made up from union players.

Other organizations include the American Guile of Variety Artists. The AGVA represents singers, dancers, comedians, ice skaters, jugglers, magicians, and others who perform live. The AGVA provides membership to all types of performers from the struggling to the world-famous. The AGVA will negotiate with the venues of its performers. The Screen Actors Guild is made up for actors, singers and even on-screen instrumentalists. All of these organizations are very specific to its members and who can join. A musician may have to be a part several unions or guilds to get the attention he need to succeed.

Some of the benefits to being a part of a musicians union are laid out in a Bill of Rights fashion including how union musicians are to be paid:

1. The right to enjoy a minimum wage, whether derived from live performance, royalties, or reuse, that is sufficient to provide a standard of support proportional to the entire investment of time and resources required to secure and perform said gainful employment.
2. The right to safe and healthy working conditions including protection from health threatening theatrical devices, demeaning and exploitive costumes or uniforms, excessive sound pressure levels, substandard travel arrangements, ingestion of second hand tobacco smoke, irrelevant recorded music before performances and during intermissions and the right to reasonable rest periods.
3. The right to equal employment opportunities based on musical qualifications and/or entertainment value regardless of race, ethnic background, age, gender, religion, cultural diversity or political affiliations.
4. The right to negotiate fairly on one's own behalf with universal recognition and legal enforcement of resulting contracts on agreed terms.
5. The right to ownership of all intellectual property rights as applied to compositions, performances, and recordings by all players and singers as well as leaders and publishers who are already protected.

Minimum wage from gainful employment must be sufficient to pay all necessary costs for life, shelter, and health care in the proportion of 100%

for 40 hours weekly invested and directly proportional for fewer hours. This investment of time includes, in addition to hours of actual live performance, those hours spent in practice, rehearsal, preparation, post-production and (when required by the employer) promotion of the event. In absolutely no instance shall this total work investment be compensated for less than federally mandated minimum wages.

We can see that union protects and serves the musicians and gives them freedom to pursue their own careers in the performing arts. These organizations create stability for the pursuit of full-time jobs in many different areas of the arts, not only in music but also in the world of theatre and visual arts.

Bibliography: