



HOW TO GET PAID FOR MUSIC IN THE DIGITAL UNIVERSE

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A Songwriter's Guide to Music Royalties

"Collecting Royalties Can Be Hard to Do"



LEARN THE BASICS

What is a copyright and what legal rights does it provide?

A copyright is created by federal statute based upon the US Constitution, Article 1, § 8, clause 8, which grants Congress the authority to protect authors and their "writings."

17 USC § 106 sets forth the rights granted to the author of a musical composition or sound recording. Think of the entire copyright as a bundle of sticks with a ribbon around them. Each stick in the bundle is separate and distinct from the other. This means each may be sold (an "assignment"), or rented (a "license") separately together.

A composer or author of a sound recording has the **exclusive** rights to **do** and to **authorize** any of the following:

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1. to **reproduce** the copyrighted work in copies or phonorecords;
2. to prepare **derivative** works based upon the copyrighted work;
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;
4. to **perform** the work publicly;
5. to **display** the work publicly; and
6. in the case of sound recordings, to perform the work publicly by means of a **digital audio** transmission.

What do I need to protect?

There are **two** different copyrights in music. The first is for music and lyrics, the copyright for the song itself. The second is for a master recording of any song, called a “phonorecord” in the Copyright Statute and is protected by a sound recording copyright that has two primary rights:

1. Reproduction of the master in any form
2. Performance of the Master in a digital audio transmission

This is important because *different* agencies collect *different* rights. The sound recording and the copyright in the song require *separate* licenses in order to get paid. You will need to affiliate with a PRO for performances of the song on radio and television, and a digital collection agency to get paid for performances of the master on the Internet.



Who licenses each right and who collects the money?

Note the difference between an **exclusive** and a **non-exclusive** license. An exclusive license grants permission to one person, and excludes all other, including you. A non-exclusive license means more than one person is “renting” and can use the song or grant rights.

THE SONG

Reproduction	Mechanical license	Harry Fox, direct, or a publisher
Derivative	Publisher or writer issues	
Distribution	Publisher or writer issues	
Song Performance	PRO	ASCAP, BMI or SESAC
Sync License for Film or TV	Publisher issues directly	

THE MASTER

Reproduction	Owner issues directly
Master Use for Film or TV	Owner issues directly
Master Performance on Internet	Digital Rights Collection

Do I need to register my copyrights?

The answer is yes, yes, and YES. While the copyright law vests protection in a song or master *from the moment of creation*, this is misleading. While registration is not mandatory in the US, without a registration, you will rarely if ever be able to enforce rights against someone who does not pay!

All statutory remedies including the right to collect damages without proof of earnings by an infringer, and the right to collect your attorneys' fees are tied to registration. Without a registration, you can only sue to stop use, and you have to pay for the cost of the lawsuit. A copyright injunction is rarely granted and legal fees can run into hundreds of thousands of dollars!

How do I register my copyrights?

Go to www.copyright.gov, fill out a form, and send in one song, or a collection of songs or masters on one application.

Note: The myth of mailing a copy of a song to yourself is not a substitute for copyright registration—it merely shows you wrote a song as of a certain date. It does not give you any legal rights. Only registration at the Copyright Office can do that!

What's the difference between the publishers' share and the songwriter's share of income?

By *custom and practice*, meaning *not* by law, songwriters who sell a song to a music publisher sign a songwriter's agreement in which they transfer the title to the copyright but retain the right to receive 50% of the income from the song.

In more recent years, by custom and practice, different splits of the copyright royalties have been created including co-publishing agreement. Let's review the basic agreements.

What are the different types of publishing agreements?

Administration Agreement

Transfer of 100% of the right to license and collect royalties to a third-party administrator in exchange for a fee of 10-25% of the income. This most often for a term of years and not a permanent transfer.

Co-Administration Agreement

Two or more publishers jointly own the copyright and each administers its own share and issues its own licenses for its share of the song.

Co-Publishing Agreement

Two publishers jointly own one-half of copyright and the writer keeps the other 50%. *Question: Who collects and pays?*

Digital Rights Collection

An agreement for distribution of masters across multiple Internet platforms and collection of royalties from public performance of Masters Sound recordings on YouTube, Pandora, Spotify, etc.

Master Use Agreement

Similar to a sync license (see below), a master use agreement but grants permission to use a master in film, television or a commercial.

Participation Agreement

Songwriter/Publisher transfers the copyright to third party publisher and receives an income participation in the publisher's share, Split is typically 75-25 in favor of songwriter/participant.

PRO Publisher Affiliation Agreement

The Agreement required to collect the publisher's share of performance income from ASCAP, BMI or SESAC

PRO Writer Affiliation Agreement

The Agreement required to collect the writer's share of performance income from ASCAP, BMI or SESAC.

Songwriters' Agreement

Transfer of 100% of copyright to third party publisher in exchange for 50% of the royalties.

Sync License

A negotiated license for use of a song in a film, television or commercial.

RESOURCES

Public Performance Organizations (PRO)

[ASCAP](#)

[Broadcast Music, Inc. \(BMI\)](#)

[SESAC](#)

Music Industry Organizations Supporting Songwriters

Songwriters of North America (SOMA)

[Association of Independent Music Publishers \(AIMP\)](#)

[The California Copyright Conference \(CCC\)](#)

Master Performance Royalties

[Sound Exchange](#)