

CO-PUBLISHING by Ray Coleman, ISA

A common practice in the music business is for two or more music publishers to own the rights to the same musical composition or copyright. Such an arrangement is generically referred to as co-publishing.

There are various types of co-publishing agreements, with differentiations made as to the administering publisher- i.e., in a *joint publishing* agreement, each publisher will administer its own share; in a *co-publishing* or participation agreement, either the original or the participating publisher is the administrator. Participants in co-publishing agreements involve all types of music publishers: independent, record company-affiliated, and those owned by recording artists, producers, songwriters and managers.

Co-publishing arrangements arise under various circumstances, such as co-writers of a song each assigning half of the publishing rights to their respective private publishing companies, or an artist or a producer obtaining a "piece" of a copyright from the writer or publisher for recording it, or a record company publisher obtaining a portion of the rights to musical compositions written and/or recorded by artists on the label's roster, or a manager and an artist "splitting" the rights to all songs written and/or recorded by that artist (the manager having had the bargaining position to demand this).

It is particularly common for writer/publishers to enter into co-publishing agreements with large publishers, as such an arrangement is often beneficial to each. Many large publishers seek co-publishing deals with established writers who have many hits to their credit, or in some cases, with promising new writers, as this enables them to obtain ownership rights to the new songs of talented writers, which they would not otherwise acquire. Publishers, to be competitive, generally need new and fresh songs with commercial potential.

For *successful* writers, co-publishing agreements are attractive for the attendant cash flow benefits, as they are often able to negotiate large advances. In addition, large companies are usually better equipped to exploit songs and maximise their income, an inviting prospect. Some publishers also offer free office space, telephone service, use of office equipment and supplies, and other resources.

The writer of a co-published song or catalogue generally *receives one half of the gross earnings less direct expenses other than administration fees*. In some cases, the larger publisher will waive its commission for administering the writer/publisher's catalogue.

Administration of the copyrights is usually done for a fee of 10% of the gross income.

Here is an example of how the royalties work. Assume that the record royalties of the co-published catalogue for a particular royalty period amount to £25,000. From this income the administrator/ co-publisher deducts a (let's say) 10% commission, or £2,500, leaving a balance of £22,500. It then forwards a check to the writer for one half of the gross royalties, or £12,500, leaving a balance of £10,000. The £10,000 balance is then divided equally between the two co-publishers. In conclusion, the

administrator/co-publisher's gross earnings are £2,500 plus £5,000, or £7,500. The writer/co-publisher's earnings are £12,500 plus £5,000, or £17,500.

In printed publications of the mutually owned works, the copyright notice will contain the names of both publishers, with reference normally but not necessarily made to the administrator of the copyright.

Article Source: Extract from ISA Songwriters Course (“Selling Your Songs” edited by Jim Liddane, International Songwriters Association, www.songwriter.co.uk)

*If you are particularly interested in this subject, why not consult the following article which is published on the Music Publishers' Association of Ireland website?
<http://www.mpaiireland.com/>*

Article: Co-Publishing Agreements

The co-publishing agreement is one of the most important contractual arrangements in the music industry. It gives the songwriter a share of certain rights and income that he or she would not be entitled to under the standard writer-publisher contract.

For example, under the terms of an exclusive songwriter contract, the writer transfers the copyright of a song or songs to the music publisher and is paid 50% of all earnings received by the publisher from those songs. Under the terms of the co-publishing agreement, however, the writer sells and transfers only a portion of the copyright and retains the other portion for his or her own publishing company. More importantly, the writer receives not only the standard 50% songwriter share of all earnings but also a portion of the 50% that is normally reserved to the music publisher (the so called "publisher's share of income").

As a general rule, the co-publishing arrangement is usually available primarily to writers who have a successful track record of past hits, writer/ performers who have the potential of securing a record deal, writers who have a current recording artist contract, writer-producers and any other writer who has the bargaining power to negotiate such an agreement with a music publisher.

There are a number of basic sets of circumstances which lend themselves to the signing of a co-publishing agreement. The first is where the writer has had a number of hits while signed as an exclusive writer to a publisher and the contract is approaching its expiration date. Considering the writer's past success, the current publisher (or another competing publisher) will offer a co-publishing arrangement for all future compositions (and possibly past songs also) as an inducement to re-sign or sign as an exclusive writer.

Another situation that often occurs is where the successful writer already has a music publishing company and a major publishing company wants to sign the writer. Under such circumstances, the major company will normally agree to a co-publishing arrangement in order to get the right to publish the songwriter's past and future compositions.

A third situation is where a writer-artist has a recording contract with a major label. In such a case, a publisher will always be willing to enter into a co-publishing agreement with the writer/recording artist, since the publisher knows that the recording artist will release self-written material and there will be guaranteed commercial exposure of the songs.

A fourth common situation is where a writer has signed a single-song contract and the song becomes a major hit. Such a writer, because of this success, will have the necessary bargaining power to negotiate not only an exclusive songwriter's agreement but also a co-publishing agreement with a major publisher for all future songs.

Sharing of Income

One of the most important aspect of the co-publishing agreement is how the songwriter and music publisher share the income that is earned from CD and tape sales, videos, performances, motion picture and television synchronization rights, commercials, downloads, and all other sources of revenue generated by a writer's songs. The most common sharing of income arrangement is known as the "50/50 split." This equal sharing of income (50% to the writer's company and 50% to the major company) refers only to those monies that represent the music publisher's share of earnings. It does not relate to the writer's share, since the songwriter will still receive his or her 50% songwriter's royalties regardless of the terms of the co-publishing agreement.

For example, under the standard music industry publishing contract, the writer is entitled to 50% of the net income earned from uses of the songs, and the publisher entitled to the other 50%. For example, if a total of \$100,000 in royalties is paid by a record company to the music publisher for the sale of CDs or audio cassettes, the publisher would be entitled to keep \$50,000 and the songwriter would receive \$50,000.

Under the co-publishing agreement, however, the writer receives not only his or her 50% share of songwriter income but also receives a portion of the music publisher's share. If we keep our previous example of \$100,000 received by the publisher from CD and tape sales and assume a "50/50 split" co-publishing arrangement, the total income received by the writer would be:

\$50,000	Songwriter Royalties (50% of \$100,000)
\$25,000	Songwriter's Share of Publisher Royalties (25% of \$100,000)
\$75,000	Total

As can be seen, the songwriter is entitled to 50% of all monies received as a songwriter, with the writer's publishing company and the major publisher sharing the remaining 50% of income equally. In effect, the writer and his or her company receives 75% of all monies earned, and the major publisher receives 25%.

Compositions Covered by the Agreement

The agreement will normally cover all future compositions created by the writer during the term of the co-publishing agreement as well as, in some cases, all past songs written which are not controlled by another publisher.

Transfer of Copyright and Other Rights

The writer's publishing company will usually transfer 50% of the copyright ownership

of all compositions to the major publisher. In addition, the writer's company will also normally give the major publisher all administration rights, including the right to license the use of the musical compositions throughout the world and the right to collect any monies that may be earned by the compositions. As with some songwriter agreements, the co-publishing agreement may also contain certain restrictions (e.g., no advertising commercial uses without consent) and reversions.

Term of Agreement

The initial duration of the agreement can vary, but the usual arrangement is for an initial contract term of 1 or 2 years, with a number of successive options on the part of the major publisher to extend the agreement for additional 1-year periods. The first period of the term may be for 1 year with three successive 1-year options; 2 years with two 1-year option periods; 4 years with no option periods; or any other variation that may be negotiated. Other agreements may be tied to the release of a minimum product commitment (e.g., for 2 years or the release in the United States of 12 songs on a major record label, whichever is later) or the recoupment of all advances paid under the agreement.

Signing Advances

Depending, of course, on the reputation of the writer, the existence of any recording artist commitments, the quantity and quality of the songs controlled by the agreement, and the inclusion of any pre-existing hit songs, the major publisher will pay certain monies to the writer or the writer's publishing company at the time the co-publishing agreement is signed. These monies are treated as advances recoupable from any future royalties that may become due to either the writer or the writer's publishing company.

To put it simply, all royalties that become payable to the writer or his or her publishing company under the agreement will be used to reimburse the financing publisher for the monies advanced at the time the contract is signed. For example, if \$50,000 is given to the writer at the signing of the contract, then the first \$50,000 in royalties due the writer or the writer's publishing company will be used to recoup the advance given. Until that happens, the writer and the writer's company will not receive any royalties.

Option Year Advances

In addition to advances given upon signing, the major publisher will pay an additional advance whenever it exercises an option to extend the duration of the agreement. Such advances can be paid either in a single lump sum at the start of an option period or in several monthly payments during each option year of the contract. For example, there might be a payment of \$60,000 upon commencement of each option period, or the same \$60,000 could be paid out in twelve equal monthly installments of \$5,000. This type of monthly payment method can also be used in the initial period of the Agreement. Many times, option year advances are based on a percentage of the prior year's earnings with minimums and maximums provided so advances won't go below or above certain set amounts.

Advances Based on the Release of Commercial Recordings

If the writer is a recording artist or producer, the co-publishing agreement will usually guarantee a specified advance if an album containing songs written and recorded by the writer is released during each year of the agreement. The amount of this type of advance varies, dependent on the writer/artist's commercial success and appeal, the number of songs by the writer that are contained on the album, the reputation of the label releasing the CD, where the release occurs, how high it gets on the trade paper charts, sales activity and whether or not past advances have been either totally or substantially recouped.

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This article is based on information contained in the new, revised paperback edition of the book "Music, Money, And Success: The Insider's Guide To Making Money In The Music Industry" written by Jeffrey Brabec and Todd Brabec (Published by Schirmer Trade Books/Music Sales/435 pages).

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