

## **MUSIC PUBLISHING FOR BEGINNERS by Ray Coleman, ISA**

### **Using an established publisher versus setting up your own publishing company:**

The minimum deal you will be offered nowadays by a publisher is 60-40 and more likely 70-30. Of course, the publisher will expect a reasonably good demo for this - and he is unlikely to offer too much in the way of an advance. He will actively attempt to place the song for recording, and he will handle all the paperwork - protecting your copyright around the world, all this for perhaps 30%.

Apart from the money, there are other advantages to using a publisher. After all, if you have to spend a lot of time on paperwork yourself, will you get any songs written? Will you be able to get cover versions by other singers? Will record labels take you seriously if you own a publishing company operating out of a back bedroom? What will you do about overseas deals? How will you collect royalties?

That's the down side. On the other hand, if you can place the song yourself for recording, do you really need a publisher? After all, people can be employed or hired to handle the paperwork, and there are organisations which will collect the royalties for you.

Those are the pros and cons. At the end of the day, you will have to decide for yourself. *To put it another way, is the theoretical advantage (financially) of handling your own publishing offset by the logistical complications and are you better off offloading the publishing to an independent publisher?*

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Setting up a music publishing firm appears far more daunting than it need necessarily be. If you are already determined to go ahead, the following are the basic steps to take.

(1) Decide on a name and check that the name chosen by you is not already in use. You can do this by contacting the Director of Publishing Administration at PRS (UK), ASCAP or BMI (US). The ISA can often tell you if an active company exists with the same name as chosen by you, but not of course, if an inactive company with the same name has been registered, but is not trading.

(2) Decide on affiliation. If you want to affiliate with PRS in the UK, or ASCAP or BMI in the US to collect royalties on song performances, these organisations generally prefer you to affiliate when the song is ready for release, and not in advance, but you should write first for details on each society's requirements.

(3) Copyright your songs.

(4) Make your demos as good as possible. You will be competing as a publisher, against other publishers, and publisher demos are generally a lot better than songwriter demos.

(5) Print quality letterheading, address and tape labels. These are very important, as record labels are unwilling to work with what might appear to be an amateurish publisher.

(6) Build up a list of contacts in each of the labels. The ISA can generally help with contact addresses for managers, agents etc., as well. Incidentally, if you do not have a contact name, then do not be afraid to ring up the record label and ask for the name of the person to whom material should be sent. If you sound confident and convincing, they will be convinced and give you the requisite information.

(7) When you get your song on record, you should be able to collect the mechanical royalties yourself, or you may prefer to utilise the services of the MCPS in the UK, or the HARRY FOX AGENCY in the US.

(8) If things get really busy, you may decide that the paperwork is getting a bit too much, and that royalty collection, administration, copyright etc., is taking up all your spare time. If so, contact somebody like Leosong Copyright Services, Suite 8, Westmead House, 123 Westmead Road, Sutton, Surrey SM1 4JH, UK (Tel. 081-770 7177). They can take care of everything for a small percentage.

(9) Blank contracts, for issuing to other songwriters, can be obtained from BASCA, 34 Hanway Street, London W1, UK (Tel. 071-436 2261).

(10) Finally, some addresses you may need:

PRS, 29-33 Berners Street, London W1, UK (Tel. 071-558 5544)

MCPS, 41 Streatham High Road, London SW16, UK (Tel. 081-769 4400)

ASCAP, 1 Lincoln Plaza, New York 10023, USA (Tel. 212-621 2000)

BMI, 320 West 57th Street, New York 10019, USA (Tel. 212-586 2000)

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As I say, these are the basic steps to take if you have already decided to proceed. However, I do feel that you should look at the whole question in a more detailed fashion.

In 1967, when the ISA started, only one non-performing member had his own publishing. In 1976, the situation had altered so much that we introduced a question on the membership application form, asking if the new writer had his own publishing company. By 1985, the ISA had over 600 members with their own publishing. Nowadays, we send out on average 20 letters like this every week, and every week, one more ISA member starts his own publishing firm.

Obviously you too have thought about starting your own publishing company, but are you sure you want to? Even if you are sure you want to, will it benefit you?

You may be thinking of the fact that as a songwriter-publisher, you will get to keep more of the income generated by your song. This is true, but do not forget, that even if you are splitting the income with a publisher, the days of the 50-50 deal are long since gone.

The minimum deal you will be offered nowadays by a publisher is 60-40 and more likely 70-30. Of course, the publisher will expect a reasonably good demo for this - and he is unlikely to offer too much in the way of an advance. Still, if he wants to earn any money at all from the deal, he will have to perform one of his traditional functions for you - namely placing the song for recording, and he will still handle all the paperwork - protecting your copyright around the world, and all this for perhaps 30%.

Apart from the money, there are other advantages to using a publisher. After all, if you have to spend a lot of time on paperwork yourself, will you get any songs written? Even if you get a song released on record by the fabulous Johnny Star, will you be able to get cover versions by other singers? Will Johnny Star's record label take you seriously if you own a publishing

company operating out of a back bedroom? What will you do about overseas deals? How will you collect royalties?

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At the start of this article, I listed the basic steps, but the following points should also be noted.

Firstly, the name of your new venture. If your name is Michael Charles Atkins, then Michael Charles Atkins Music is an obvious if somewhat uninspiring choice for your new firm. On the other hand, MCA Music has a snappier ring to it - and should provide you with many happy hours in the law courts when the real MCA Music get to hear about it.

The moral of the story? Check that the name you have chosen is not being used by anybody else. The PRS, MCPS, BMI, ASCAP and the MPA have just about everybody on their books. We can always run it through our computer for you - it does not prove that nobody else has it, but we do have most active names on our files. Then talk to your accountant, and lawyer, and get the formalities taken care of.

You must have a telephone number naturally enough, and when you start sending out letters and tapes, do remember that your correspondence should be typed. Also, get CD labels printed with your company name, address and telephone number on them.

Quite a few firms do these nowadays -the cost is about £30 per thousand, printed on white paper. If your letter headings are being printed on coloured paper, then your CD labels should be printed also on the same coloured paper. Similarly, you should have matching envelopes - not necessarily printed. Finally, get parcel labels printed, again on the same coloured paper that you have used for everything else.

All of this should set you back about £100 - if you do not have a local printer handy, then try the Printing section of "Exchange & Mart". Get samples of everything in advance, and look for companies offering package deals (e.g., 500 letter headings, 500 envelopes, 500 labels etc., for a fixed price).

Although the £100 may seem an unwise investment – your letter headings and your demos are your only shop window ... if the paperwork looks right, then your material will be listened to with more credibility. If it looks amateurish, the listener will be put in the wrong frame of mind when dealing with your submission.

Pick your first song for promotion. The demo must be the very best you can afford. You are now competing - not just against other amateur songwriters for the ears of a publisher – but against professional songwriters and music publishers - for the ears of the A&R Man or recording artist.

Gone are the days of picking publishers at random out of a list with a handy pin. You must now aim your song at the most suitable and likely artist. If you subscribe to a tipsheet like SongPluggger (£330 per year), then you will have a fortnightly list of about 10 singers or labels looking for specific songs at that moment. If not, then you should assemble your own promotion files.

You do not need a vast file. Be selective. After all, Jackie Wilson is deceased ... Paul McCartney does not normally record material not written by himself... Status Quo are a great band but you write ballads ... in other words, don't waste your time compiling one vast directory. Work out what singers or groups you could write for who do record material written by people other than themselves, and assemble all the information you can on these people.

What label are they on? Who is the A&R man? Who produced their last record? Do they have their own publishing? Who manages them? Above all, do not be afraid to ask for information. The record label will give you the name and the address of the person to whom material should be submitted if all else fails, and the ISA has files on nearly 20,000 separate acts, labels, publishers, producers, etc.

Send off your song to the most likely choice, and then, forget all about it. Concentrate on the next submission. Send off another song. Then, start on the third one...and so on. Do not look back. Do not wait for replies. Do not - and I must stress this - pester anybody. After all, if you really were the professional publisher you claim to be, you would be too involved with your hit songs to be worrying somebody else about the one song that was not getting attention.

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At some stage, hopefully, somebody will start to nibble. There may be talk of a record release, and you may be wondering about collecting the royalties. First of all, you should contact the relevant performing rights organisation. In the UK, this will be the PRS. If this is your first cover, the PRS is not likely to be willing to accept your membership as a publisher. Of course, if your song starts to sell in huge quantities, all sorts of doors may be opened to you. In any event, the PRS will end you information free of charge.

In the USA, you will have to decide to affiliate either with BMI or ASCAP.

Collecting royalties from record sales will be easier because the label will issue you with statements every so often. Of course, you may wish to affiliate with one of the collection agencies for mechanical royalties also, and save yourself the trouble of keeping track of these payments. In the UK, this is the MCPS. In the USA, contact the Harry Fox Agency at 110 East 59th Street, New York 10022.

If you are already beginning to see all this as a bit complex, do not forget that there are companies which exist to take care of all the paperwork for you. In the UK, Leosong Copyright Service Ltd charges a flat 10% commission. A similar company in the USA is Copyright Service Bureau at 221 West 57th Street, New York 10019.

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Finally, **writers starting music publishing firms, are often interested in signing other writers.** Beware of doing this until you have had some success yourself. For a start, it is essential to have your act 100% together. Are you sure that you can protect copyrights? Have you sufficient money to pursue copyright infringement cases should they happen? Are you a member of the relevant societies which collect the royalties?

If you fail to take care of business, you may make a mess of somebody else's career, fail to collect all the monies due to one of your writers, or fail to keep proper books of account (and do remember, a writer can examine your books if he wants to, and if you refuse to let him, can get a court order demanding access).

Not only may the aggrieved writer then refuse to honour the contract, he may very well sue you for negligence as well. Ten minutes under cross-examination in court may only too easily reveal that you do not really know what you are talking about - and that could mean heavy damages.

However, if you just want to publish your own tunes... if you're sure that you will still have enough time to continue writing songs...if you feel you can handle the paperwork (or get somebody to do it) ... and if you think you could place your own songs as easily as any pro music publisher could, why not go ahead? I hope I have shown you that music publishing is not quite as mysterious as it sounds!

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You will not have been involved for very long in publishing, before somebody will mention "**co-publishing**" to you. 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 would be 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: 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 their 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.

Take one example of a co-publishing/administration agreement. A singer/songwriter with a few hits to his credit as both a writer and a recording artist signs a recording contract with a large record company.

He has a music publishing firm and makes an agreement with his label's publishing affiliate to co-publish all the songs he writes for the length of his recording contract with the label, each publishing company to own 50% of the copyrights.

The co-publishing agreement states that the label's publishing arm will administer the copyrights for a fee of 10% of the gross income.

Foreseeing the possible advantage to the label in reducing the statutory mechanical royalty rate for each record or tape sold, the singer/songwriter's co-publishing agreement stipulates that for all the songs they co-publish, the mechanical royalty will be the full statutory rate.

The following is an example of how mechanical royalties for a particular royalty period would be divided:

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 its (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.

The co-published songs might of course have earnings in other areas for that particular royalty period, such as from public performances or print sales. It should be noted, however, that writers receive their performance royalties directly from their performing rights organisations and most songwriter/music publisher agreements provide for a print royalty to the songwriter at a rate that is less than that receivable by the publisher.

As regards copyright registration and notices in the US in a Co-publishing agreement, a copyright application for registration of a musical work, containing the name and address of each copyright owner, is filed at the US Copyright office by the administering publisher. If a song was registered before the agreement took effect, the administrator/co-publisher would record the transfer in part of copyright ownership in the Copyright Office.

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.

As regards performing rights organisations, PRS, ASCAP, BMI, and SESAC, in recognising the practice of sharing in the ownership of copyrights, make separate performance royalty payments to publishers and writers of songs with co-ownership interests after receiving instructions to that effect. For all four organisations, writers receive their performance royalties directly from their organisation and not from their publisher.

A mechanical rights organisation, such as the MCPS, the Harry Fox Agency or the American Mechanical Rights Association, will, after receiving instructions, make separate payments to publisher co-owners in a copyright for record royalties and synchronisation and transcription fees it collects on behalf of its affiliated publishers.

Mechanical rights agencies in the US do not pay writers their share of earnings directly. Writers receive such income from their publishers. In a co-publishing agreement where each publisher administers its own portion of the copyright and one is affiliated with a mechanical rights agency and the other is not, instructions are given to record companies on how to make payments - either through a mechanical rights agency or directly to the publisher.

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**Collecting royalties:** At some stage, somebody will start to nibble. There may be talk of a record release, and you may be wondering about collecting the royalties. First of all, you should contact the relevant performing rights organisation. In the UK, this will be the PRS. If this is your first cover, the PRS is not likely to be willing to accept your membership as a publisher. Of course, if your song starts to sell in huge quantities, all sorts of doors may be opened to you. In any event, the PRS will end you information free of charge. In the USA, you will have to decide to affiliate either with BMI or ASCAP.

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