

ALL ABOUT SONGWRITING ROYALTIES

Who collects and pays out to the songwriter?

Money from record sales [**mechanical royalties**] is collected by the Mechanical Copyright Protection Society- MCPS and is paid to the publisher, who pays this on to the songwriter.

Money from radio and television plays [**performing rights**] is collected by the royalty organisations [like the Irish Music Rights Organisation - IMRO] which pay the songwriter directly.

Money from record sales applicable to a songwriter who is also a recording artist [**recording royalties**] is paid by the record label to the artist. The amount receivable is stated in the recording contract between the artist and the record company and is usually based on a percentage of the wholesale price of the recording.

There are four royalty sources that an artist is technically able to benefit from.

The first royalty source is "**artist**" **recording royalties**. These are **royalties due to an artist from record sales**. Usually an artist can be offered anywhere between 10 to 20 royalty points depending on his/her credibility (Note 1). These royalties have nothing to do with songwriting.

Recording royalties are amounts receivable by an artist for each recording sold (Note 2). The amount receivable is stated in the recording contract between the artist and the record company and is usually based on a percentage of the published dealer price of the recording (roughly equivalent to the wholesale price of the recording, not the retail price). The percentage is agreed at the time that the recording contract is being negotiated and usually provides for an increasing percentage as the level of sales increases. Recording royalties are payable to every artist credited with performing on the record (and are collected in Ireland by RAAP). Simon Cowell is famed for accumulating a small fortune by ensuring he tapped a tambourine, shook a shaker or clanged a triangle on his artists' records, ensuring he received a royalty on each unit sold (Note 3).

The remaining three royalty sources set out below are specifically relevant to songwriters (Note 4).

The second royalty source is "**mechanical**" **royalties**. These are **royalties payable to the songwriters**. The average European rate is about 15 cent per song. A songwriter who writes 100% of an album's worth of 10 songs will therefore make €1.50 cent per album sold. It is therefore extremely beneficial for artists to write the music they record.

Mechanical royalties are the amounts payable by the record company to the Composer for each recording sold that includes the Composer's compositions (Note 5). *In*

Ireland the amount is 8.5% of the published dealer price and is collected by MCPS (Mechanical Copyright Protection Society) who pass the amounts on to the composer's Publishing Company who in turn pass the amounts on to the composer. The Publishing Company will have agreed a rate with the composer for collection of these royalties (set out in the Publishing Contract and usually between 15%-20% of the amount collected) [Note 6].

Mechanical copyright is collected by the publisher from IMRO. The publisher will be a member of the Music Publishers Association of Ireland (who in turn own MCPS). So to receive mechanical royalties, the songwriter either has a publishing deal or he runs his/her own publishing company which is a member of MPAI.

The only real drama with mechanicals is that labels somehow get away with paying artists only 75% of the statutory rate, which means labels are effectively withholding 25% of the copyright income. There is absolutely no reason for them to do this apart from the fact that they have always got away with it. Very successful artists can usually negotiate 100% (Note 7).

The mechanical royalty in most European countries is currently eight per cent. The mechanical royalty in the U.K. is usually 6.25%. The US mechanical royalty rate is lower than in many other countries, but the huge market there makes it very lucrative if you hit the jackpot.

The third royalty source is **Performing Rights** which is money from radio and television plays collected by the royalty organisations (who pay the songwriter direct). IMRO carries out four major distributions of domestic income each year in April, July, October and December. The distributions cover broadcasting revenue received from Irish radio and TV stations for music performances. In addition, many firms use Radio and Television as a source of background music. Revenue for this background music is distributed along with the revenue from the broadcasters themselves.

Each station's revenue is distributed as a separate pool on the basis of logs submitted by the broadcasters. Within each pool, all performances other than advertising music are treated on the same basis. For most stations, each play has the same value. However, if the station provides duration information, performances are paid by the minute. Payments do not depend on any other considerations, such as time of day, 'featured' versus background music, writer's society affiliation, or original composition versus arrangement. The revenue is shared between all performances logged and matched.

RTE pays €3 a minute (or about €10 a song). BBC Radio pays €30 a minute or about €100 a song. In the USA, the more spins a song receives, the higher up the charts the song moves. Since a songwriter will receive money based on airplay, the ultimate goal is to move slowly all the way up the charts, generating as much airplay as possible.

In the USA, radio stations pay royalties only for those performance rights carried by the musical work (the lyrics/composition). They do not pay for performing rights to

the stakeholders of the sound recording. In other words, songwriters and publishers get paid but artists and record companies do not get paid (Note 13).

Be sure to tell IMRO where you live. They have international links (e.g. in the USA with BMI and ASCAP, the U.S. performance rights organizations) and in this way all music-playing outlets are monitored - radio and television stations, nightclubs, websites and other entities that play music. IMRO/BMI/ASCAP collects royalties from all outlets and pays these to the music publishers and songwriters. Their payments are often the most reliable, consistent source of income from songs (Note 8). So, make sure you register with one of these organizations and that your address and other information are current.

An Irish songwriter should join IMRO (Irish Music Rights Organisation) as a means of getting all performing rights income due to him/her paid.

The fourth royalty source is **Synchronisation Fees** - amounts due to a composer in respect of his work used in films, games and advertisements. These fees are charged by the publishing company to the filmmakers.

You generally get paid twice for any song that is used in a television broadcast. There is typically a one time, up front licensing payment that the show pays to the writer in order to use the song. Then once the song airs the writer receives the performance royalty. The amount of the licensing fee varies but for television shows is usually in the range of \$500 to \$3,000. The amount of the performance royalty varies greatly depending on a number of different factors. These factors include the length of the segment in which your song is used, how prominently your song is used, whether your song is aired during prime time or during the day and a variety of other factors (Note 9).

To give you an example, the first time I had a song on TV, one of my songs was used in a daytime drama and was used for 55 seconds. The royalty I received for this placement was \$800 and in addition to this I received a \$500 licensing payment. So I made a total of \$1,300 for 55 seconds of air time. For films in theatrical release you don't receive performance royalties while the film is in theatrical release, but the licensing fee is larger. Licensing fees for feature films are generally in the range of \$2,000 to as much as \$25,000, or even larger for more established artists. The licensing payment amount varies depending on the film's budget and how badly they want a particular song. More established artists generally command larger licensing fees (Note 10).

Other Fees can arise from sales of sheet music, ringtones and any other reproduction of the work.

Online sales: Songwriters and publishers get 8% of an online music sale, a rate set in 2002 when online music was in its infancy. The figure was accepted by the

songwriters as a temporary discount from their preferred 12% to compensate for losses through piracy and illegal downloading (Note 11).

This compares with copyright royalties of 6.5% on physical products such as CDs. The BPI now wants the online royalty rate reduced to 6.5% or less. Record companies get 38.5% of the sale of a CD, but they take 64% of an online sale (Note 11).

For a downloaded track costing 79p, writers and publishers get 6p, 11p goes to the service provider, 7p to the credit card company, 5p goes on tax, and the record company takes 50p - some of which goes to the performers (Note 11).

RIGHTS IN A SONG EXPLAINED

One day, with nothing else to do you wander down as far as the local record shop 'Mickey's Mental Metal and Bluegrass Hut'. As you're drawing near you hear what sounds like a Ten Speed Racer song you've never heard before coming out of the shop's huge sound system. Your curiosity roused, you nip in and Fat Charlie, the ex-roadie who runs the place tells you he has just got TSR's new album in stock. You ask if you can hear another track and being an obliging kind of guy Fat Charlie lets you hear the entire album at full volume.

You trot home a happier bunny and sit down for an afternoon of trash TV. In between Blue's Clues and Kipper you notice a familiar sound and realise that one of the tracks from the album is being used on an advert already. It's a really catchy tune and you decide you have to have it as a ringtone. A quick SMS later, a questionable rendition of the song is bleeping and burbling out of your Nokia.

That evening, you're sitting around having put away the dishes and washed the cat and that song is still going through your head. You're driving your girlfriend mad humming it and you're desperate to hear it again. A brainwave strikes and you phone a request into the Tom Dunne show. You're in luck, Tom loves the song too and a few minutes later your radio is aglow.

Next morning first thing you head down to Fat Charlie's and part with your hard earned in return for a copy of the CD. As you're scuttling off home who should you run slap bang into but ten speed racer themselves. You tell them about how much you adore the album and the whole story of how you came to buy it.

'So', you ask them 'are you making any money out of this yet?' 'Well', they reply, 'because Fat Charlie played the album in the shop we'll get a performance royalty payment from IMRO for writing the song, and our record company will get a performance royalty from PPI, and because we're also the featured performers on the tracks we'll get a payment from RAAP as well. Now, none of these organisations run around taking notes of everything that gets played in a public place, but they carry out an analysis of what happens and we'll get a share of the overall pie based on how popular our music is.'

'What about the advert, then?' you enquire. 'Well with the advert, because we wrote the song they had to ask our permission to use the track and we licensed the use and

charged them a one-off fee. So did the record company, because there is a separate copyright in the recording. Plus, we'll get a broadcast royalty from IMRO for every time it goes out on air and the record company will get a broadcast royalty from PPI.

'Wow', you say, 'that's amazing. What about my ringtone, though? You're not telling me you get paid for that. 'Yep' 'Every time someone downloads a ringtone we get a royalty from MCPS, who control the mechanical right. That's the right that comes into play whenever a recording is made.'

'So do your record company get paid for ringtones too?' 'Nope, because the ringtone doesn't use the original recording the record company doesn't control the rights – they would be owned by who ever codes the ringtone'

'Poor them', you say, 'but they must do all right out of selling the album'. 'Too right' they reply 'but so do we. As part of our deal with the record company we get an artist royalty payment from them for every copy they sell, and because we wrote all the songs as well MCPS collect a royalty of 8.5% of the dealer price on every copy that's sold and we get that too'.

'But you wouldn't get that if someone did a cover version would you?' you ask. 'Indeed we would' he enlightens you, 'the mechanical royalty goes to the songwriter whether they record the song themselves or someone else covers it!'

'Jeez', you say 'it's been a real eye opener. Nice to see you again. So, where are you off to now?'

'Well, first we're stopping by Fred's Cuban Cigars, then we're off to Alfie's Shiny Red Ferrari Shop. Ciao!'

Written by Greg McAteer, MCPS for fmc © 2003 (FMC is First Music Contact, the only free and independent information and resource organisation for popular musicians and the popular music sector in Ireland).

http://www.firstmusiccontact.com/bandtips/fmc_rights_explained.pdf is the source of the article entitled "Rights in a song explained".

ADDITIONAL INFORMATION (Note 12)

- ❑ Ring Tones: the average royalty is 10-12% of the sale price with a floor rate of 10%
- ❑ Performing rights income is holding up very well in the industry, despite the decline in CD sales. So income from radio and tv is excellent. ASCAP took in \$900 million last year and BMI grossed a similar figure.
- ❑ Theatre: The royalty rate is 4.5% to the lyricist/composer/librettist until the show recovers its costs. Thereafter, 6% of the box office gross accrues to the lyricist/composer/librettist
- ❑ There are always two elements to licensing – the original master (usually owned by the record company); and the song itself (usually owned by the music publishing company).
- ❑ Use of songs in advertising: Even though the music publishing company may “own” the rights, the songwriter retains approval (effectively a veto) over the use of his material in advertisements. However, the withholding of approval must not be unreasonable. The veto can also extend to NC-17 movies, etc.
- ❑ Current royalty rates in the USA are as follows –
 1. Albums – 9.1 cent a track
 2. Downloads – 9.1 cent a track
 3. Samples – where the use of the original track is unauthorised, then all royalties accrue to the songwriter of the sampled track. Where the use of the track is authorised, then a 50% royalty applies in favour of the writer of the sampled track.
- ❑ Scores for video games – Payment is made per minute of scored music (rather like in writing music for movies). A rate for a finished product might be \$1,000 per minute (or it could be far less – everything is negotiable).
- ❑ Songs for video games – There can be a one-time fee (more likely for a new song) or a royalty arrangement. Music publishers are the key to getting access to this market – i.e. where your publisher knows when songs are being looked for and also knows who is doing the song selection.
- ❑ Scores for movies - Payment is made per minute of scored music. A rate for a finished product might be \$1,000 per minute. There are further royalties when the film is exhibited. The fee in a small independent film festival might be €2,000 upfront. But if the movie broke out of the festival circuit, the fee could rise to €35,000.
- ❑ Greeting cards – the royalty rate is 9% of the net price of a floor rate of 15 cent per card.
- ❑ All of the above shows how specialised the royalties field is and how you need an expert publisher to hawk your wares, assuming your wares are very good, in the first place!

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