

CO-WRITING A SONG – TAKE CARE OF BUSINESS FIRST

(by Owen J. Sloane)

Co-writing songs with another co-writer or a producer can be a great way of improving or exploiting your songs, but caution must be exercised to ensure that you don't end up with a split in ownership of the copyright, or other consequences, you don't anticipate. Owen J. Sloane offers eight solid tips to help you through the co-writing process.

1. When you sit down with a co-writer to start co-writing a song, make sure to establish that when the song is finished you will mutually agree on the splits in writing. In the absence of a written agreement, the Copyright Act provides a default position that divides copyright ownership in the song equally regardless of the relative quantity or quality of the material created by each co-writer. And there is no distinction in copyright law between lyrics and music or between writer's share and publisher's share. The percentage of ownership is based on 100 percent of the song, including lyrics, unless you agree in writing to a different split. And that split will apply even if the music is exploited without the lyrics and vice versa, unless you specifically provide in writing that the writer's intent was not to merge lyrics and music together, but to treat them as separate copyrights. In that case, the writer of the lyrics and the composer of the music would split income as agreed only when lyrics and music are used together. Establish at the outset that ownership of the final song will not necessarily be divided equally.

2. Rappers are writers. A rapper who contributes original material to your song is entitled to share equally in the ownership of that song with all other writers, unless you and he/she mutually agree otherwise and put that agreement into a signed writing. Also a person who supplies beats may claim an interest in the song resulting from use of those beats. This is still unsettled in law, but don't take a chance and don't use beats supplied to you without an agreement in writing as to how much of the copyright you are willing to give up to the creator of the beats.

3. Once the song is finished, agree on the splits and commit that agreement to writing. A simple agreement listing the song title, the percentage of the song owned by each writer, i.e. "the splits," dated and signed by each co-writer will suffice for each song.

4. If your song is completed and submitted to a producer or musicians for recording, unless otherwise agreed, the producer and the musicians who record the song may acquire a copyright interest in your song by reason of their contribution(s) of original material to the song during the recording process. Not all contributions will entitle them to a copyright interest, i.e., minor tweaks to the song, licks created by musicians and arguably even beats, may not qualify for copyright protection. Accordingly, make sure it is agreed up front in writing, whether the producer and/or the musicians will have been deemed to contribute anything to the song itself in your opinion to vest in them an interest in the song. If so, the splits should be agreed upon in writing and if not, the producer and musicians should sign off waiving any claim to an interest in the copyright in the song. Since the copyright in the recording is different from the copyright in the song, a separate agreement should be reached regarding both copyrights.

5. Register the copyright in the song and the sound recording with the Library of Congress as soon as possible. Although registrations do not ask for the percentage of ownership, they do ask you to identify each author or claimant. Such applications can therefore be evidence of how many writers contributed to a song and their names and whether they are claimants.

6. If you register a song and later collaborate with a co-writer or a producer or other third party who adds new material, you can separately register the new version of the song. The new registration should identify the new material and will protect only the new material and establish a claim to co-ownership by the additional writers in the new material only. The splits for the song resulting from the incorporation of the new material need to be agreed to in writing but in such an instance the co-writers of the new material will acquire an interest only in the song embodying the new material and not in the song as originally registered.

7. If you agree that someone else has an interest in the copyright, be aware that under US law, each co-writer has the right to license the entire song on a non-exclusive basis and collect 100 percent of the compensation, subject to an obligation to account to the other co-writers. If you are an artist and want to control licensing to other artists, or want to approve usages, which you may find objectionable, you must have an agreement with the co-writers that either everyone must agree on a particular usage, or you as the artist have the exclusive right to approve usages.

8. Although each co-writer has the right to license 100 percent of the song non-exclusively, most licensees will require that all co-owners agree to a license. Accordingly, if you are an artist and want to compel other co-writers to issue licenses or agree to a license that you need as an artist, i.e., for a video, or for another synchronization usage, you need to cover that in the agreement as well, otherwise co-writers can nix a license by refusing to license or by asking for too much money.

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Owen J. Sloane is a veteran music attorney who has represented many major artists over the years including Kenny Rogers, Stevie Nicks, Lindsey Buckingham, Steve Winwood, Elton John and many others. Currently, he represents Daughtry, Rob Thomas (Matchbox 20), Suzanne Vega, and the Frank Zappa Estate, among others. Sloane authored this article with the assistance of Rachel Stilwell. Firm website: <http://www.gladstonemichel.com>. He may be reached at osloane@gladstonemichel.com

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