



Inside the Music Industry

Copyright and Rights Holders

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ABSTRACT

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The objective of this study was to gather information on how the music industry operates and its historical business models, identify key differences between composition and sound recording rights as well as gain an understanding of modern licensing systems. Streaming income division between artists, songwriters, record labels, publishers and the streaming services themselves was examined to establish financial imbalance.

This study was carried out as a project involving interviewing industry professionals from different music industry institutions, referring to subject-specific and subject-related literature as well as a variety of web sources.

The findings indicate that the two main copyrights in a song, the composition copyright and the sound recording copyright, are licensed and remunerated differently. Historical licensing models, such as for those physical products, are applied to some digital services despite the differences in distribution methods.

A few gaps, for example, poor metadata communication between the publishing and the recording industry sections, evidently contribute to revenue imbalances. Lack of a unified database, absence of one-stop rights clearance societies in specific territories and lack of education amongst songwriters on how to ensure they get paid are also mentioned.

Key words: music publishing, copyright, related right, recording, streaming

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ABBREVIATIONS AND TERMS

ARESA	Anglo-American Rights European Service Agency
ASCAP	American Society of Composers, Authors, and Publishers
BMI	Broadcast Music, Inc.
CAE	Composer, Artist, Editor
CMO	Collective Management Organisation
CRB	Copyright Royalty Board
DEAL	Direct European Administration and Licensing
DSP	Digital Service Provider
HFA	Harry Fox Agency
ICE	International Copyright Enterprise
IMPEL	Independent Music Publishers' E-Licensing
IPI	Interested Party Information
ISRC	International Standard Recording Code
ISWC	International Standard Work Code
MCPS	Mechanical Copyright Protection Society
MLC	Mechanical Licensing Collective
MMA	Music Modernization Act
NA	Not Available
NOI	Notice of Intent
NS	No Society
PEDL	Pan European Digital Licensing
PPD	Published Price to Dealer
PPL	Phonographic Performance Ltd
PRO	Performing Rights Organisation
PRS	Performing Rights Society
SACEM	Society of Authors, Composers and Publishers of Music
SESAC	Society of European Stage Authors and Composers
SVP	Special Purpose Vehicle

1 INTRODUCTION

Not long ago the music industry was on the edge of crisis with CD sales plummeting and pressure set by the technological advances exposing how unprepared the music industry was for the upcoming changes. Though the industry reacted with new business models, content creators had to begin a conversation about the degree of fairness of remuneration.

“Inside the Music Industry. Copyright & rights holders” aims to be a one-stop-shop for information crucial for all who wish to gain a better understanding of the past and present of music licensing. This is achieved by analysing the current state of copyright law and discussions on how both recording and publishing rights holders are protected by it. Here, the tangled world of music licensing will be explored and explained to assist in educating those in possession of copyrights as a surprising majority of independent artists, signed or unsigned, are unaware of what copyrights they have and how they are protected.

It looks at traditional money flow models as well as business bodies involved in the royalty streams and where potential issues, such as missed royalty payments, might occur, including the effect of streaming on these issues. One of the main controversies, the amount of money paid to songwriters for their works available on digital streaming platforms will be addressed and research conducted into whether streaming services really are to blame for reportedly low royalty rates for the use of compositions compared to those of sound recordings.

Interviews with professionals heavily involved in the copyright administration and protection are included to show opinions and moods when it comes to adequate remuneration of copyright owners and processes connected. Moreover, the challenges faced by the music industry in the age of streaming will be measured against those of the past, touching upon the history of music licensing and consumption leading up to now, the era of Spotify and Apple Music.

1.1 Interviewees

Broden, A.

Worked as a copyright manager at STIM for 7 years then moved on to become a business analyst at ICE. Currently works as a publishing data analyst for Spotify.

Rickard, D.

Has experience managing multiple contracts across online music, mechanical and performance rights as well as senior management of all service delivery at PRS for Music, from broadcast TV and radio to live events. He now coordinates projects to optimise processes and ensure PRS members get paid the quickest and most accurately for their performances.

Walker, R.

Has worked in everything from the matching and processing of music shares through data quality to managing radio and the BBC across the UK. Subject matter expert in music recognition technology. Now working in contract management with knowledge of commercial licensing and processing of multi territory online licensing.

2 FOUNDATION OF COPYRIGHT

2.1 Introduction to copyright

Intellectual property rights is a term used to describe the rights within an area of law protecting creative and innovative works. Main sections of the intellectual property law are patents, trademarks and copyright. Patents are issued to protect the rights of an inventor, for example, a telephone is an invention that is protected by patent law. Trademarks protect signs, names, symbols that are considered distinctive in relation to a specific brand. (Lowe 2017, 1.) For example, Taylor Swift has trademarked her name in classes related to perfume and music. That is, no one else can use her name to make a product under it.

Copyright is a set of exclusive controls or rights automatically given to an author upon the creation of an original artistic work. To qualify for protection, a work must be fixed in a tangible form as an idea is not subject to copyright protection. Hence, though there is no need for an official registration of the work, proof is required of its creation. Works eligible for protection under copyright law include sound recordings, artistic, musical, literary works, as well as typographical arrangements. (Lowe 2017, 95-96.)

...the primary purpose of the copyright law is to foster the creation and dissemination of intellectual works for the public welfare, it also has an important secondary purpose: To give authors the reward due them for their contribution to society (Gorman, Ginsburg & Reese, 2011, 14).

1988 Copyright Designs and Patents Act recognises nine categories of copyrighted works divided into two groups: 'authorial' and 'entrepreneurial' works. Authorial works, also known as 'primary', are the original works such as literary and musical works that are not based on a pre-existing work. A musical composition is an example of an authorial work being 'musical' while the lyrics, also being in the 'authorial' category, are a piece of literary work. (Lowe 2017, 96-97.)

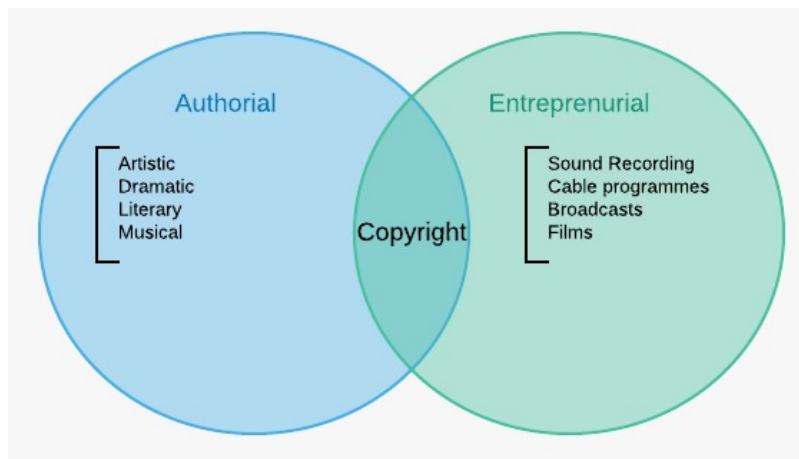


FIGURE 1. Categories of copyrighted works (Vasilkova, 2020)

Entrepreneurial, or ‘secondary’ works, also classified as ‘derivate’ works include sound recordings, broadcasts, films, typographical arrangements of published editions, cable programmes. These works are based upon already existing materials making a sound recording an ‘entrepreneurial’, or ‘derivative’ work based on an authorial one. (Lowe 2017, 97.)

Regardless the type, Bargfrede (2017, 17) states that an author, creator of an original work is given a set of exclusive core rights that can be assigned, waived and transferred:

- Right to **reproduce** the work
- Right to **publicly perform** the work
- Right to **display** the work **to the public**
- Right to create **derivative** works
- Right to **distribute** the work

2.2 Economic Rights

Upon the creation of a work and birth of copyright in that work, two types of core rights are assigned: economic rights and moral rights. National laws recognize economic rights which allow the copyright owner to receive financial compensation for the use of their works by third parties; and moral rights that ensure non-economic aspects of copyright holder’s authorship are protected, such as dignity.

The rights to reproduce, distribute, publicly perform, display to the public and create derivative works are examples of economic rights. (Lyons, Sun, Collopy, O'Hagan & Curran 2019, 90.)

2.2.1 Reproduction right

The first right given to the creator of an original work is the reproduction control allowing the rights holder to reproduce a copyrighted work in any medium, physical or digital. Historically, a licence was required to be able to make and distribute CDs, vinyl, cassettes and other physical carriers of copyrighted material to cover the reproduction of the composition on each unit. The right authorising a third party to make copies of a work is known as the 'mechanical right' and the permit obtained is called a 'mechanical licence'. (Strong 2014, 2012 – 2016.)

If a songwriter does not have a publisher and you wish to reproduce their composition on, for example, a CD that you then intend to distribute to the public for private use, you will be serving a notice of intent on them. It is crucial that the work is registered and all credits are accurately logged in the Copyright Office's public records as otherwise, the royalty will not make it to them.

2.2.2 Public performance right

The right to publicly perform a work applies to broadcasting, simulcasting or making available by streaming or as a digital download of a composition. This includes playing a song live, on TV and broadcast on the radio. (PRS for Music. "What we do" n.d.) In digital distribution public performance right is treated as the 'making available right' which covers authorization to access works online at any time (Standeford 2016).

2.2.3 Public display right

There is a similar control that copyright owners are provided with, and that is of the right to display the copyrighted work to the public. This right is not applicable to a sound recording as a musical work cannot be displayed, rather publicly performed, however, displaying elements of a composition such as the score or lyrics

will fall under the protection of such right. Public display right must be obtained for karaoke, where lyrics are shown on a screen; when publishing sheet music in books. (Good 2013.)

2.2.4 The right to create derivative works

The right to create derivative works is also known as the adaptation right and is a right to creating a new work that is based on a pre-existing one. Examples of derivative works include translations, musical arrangements and sound recordings. A new copyright is then created and is vested in the maker of the derivative work though it only covers the original contribution. Thus, in order to create a derivative work, a permission should be obtained from the rights holder or authorized party. Interestingly, the right to create a sound recording, obtained by a record label, is bundled with the reproduction right and is granted in form of a mechanical licence. (Strong 2014, 5.)

2.2.5 Distribution right

This is the right to distribute copies, including sound recordings, of copyrighted material to the public by sale or authorizing third parties to use the work. That is, the distribution right holder can authorize copies of their work to be pressed onto physical mediums such as CDs or distributed digitally. Distribution contracts before the streaming boom, pre-2007 – 2008, might not have included digital distribution, and if the contract was for a period of 20 years, any copies of that song available online would be infringing on the distribution right. (LeBlanc 2001, 57.)

2.2.6 Other rights

Different sources mention other controls as the sixth control. Some recognize the right to use music in film or TV shows, the ‘synchronization’ or ‘synch’ right, as one of the core rights. The right to public performance of a sound recording in digital formats that is relevant to the US, came about as a result of the Digital Performance Right in Sound Recordings Act of 1995. (Bargfrede 2017, 21.) This right introduced sound recordings to the world of public performance royalties in the US.

In comparison, Europe has long been rewarding master copyright owners with public performance royalties through digital and radio transmissions. In the States, the situation is different and sound recordings do not generate public performance royalties for play on terrestrial radio as such airplays are believed to be free promotion (Future of Music Coalition, 2018.) However, now, public performance of a sound recording in non-exempt digital formats means public performance royalty is generated through streaming and satellite transmissions. According to Chris Cooke (2018, 24) the right to rent copies of a work is separated as one of the core controls in the UK. Most commonly though, the right to rent copies of a work is bundled with the distribution right alongside lease and lend.

2.3 Moral Rights

Moral right, also known as 'right of integrity', is the right to prevent modifications to the copyrighted work if that modification is considered to be prejudicial to the artist's honour or reputation. Such mutilation needs to be intentional for ability to exercise the moral right. What makes moral right different from the copyright is that the moral right is a non-economic control that cannot be abandoned and stays with the creator for the duration of their lives. This right aims to protect artists' reputation, integrity and sentiments that their work embodies. As described by Gorman, Ginsburg & Reese (2011, 670), three basic rights have been identified to be the moral rights of any creator. These are:

- The right to disclose their work to public
- The right to have authorship acknowledged
- The right to prevent unauthorised alterations

Right to disclose the work to public includes the right to decide whether to create the work; when to complete it; and how to present it to the public. The right to have authorship acknowledged, also known as the attribution right, covers the right to have the author's name associated with their work, whether under their legal name or a pseudonym; and the right to prevent their work from being credited to another party. It is important that this right is respected and if a creator

wishes to appear on a CD under their stage name or a name different to the legal one, their request should be fulfilled. (Bacle, Gets & Sollosi 2019.)

The third right is the core of an author's moral right and is it the right to prevent unauthorised alterations protects the author's integrity and gives the author the right to prevent their work from being altered, changed, presented in a way that is harmful to their reputation. For example, many artists refuse for their work to be used in political campaigns as they do not want to be associated with any given political party and/or their leaders and their ways of governing. This is represented in the case when Donald Trump walked onto the Republican National Convention stage to Queen's "We Are the Champions". The band were not pleased with their music being used in that event as they did not support the views of the Republican Party. (Bacle, Gets & Sollosi 2019.)

Fair use

Moral rights are especially thoroughly examined when it concerns commentary, parody, satire and criticism. These forms of expression have right to exist without the copyright owner's prior approval through a fair use defence used to protect freedom of expression. The fair use doctrine relies on four factors that are used to determine whether a work does or does not constitute a copyright infringement. The four factors are (Gorman et al. 2011, 47):

- Nature of use
- Nature of work
- Amount and substantiality of original work used
- Economic effect

The nature of use means the purpose of the work such as if it was created to earn commercial benefit or to be used in education. Works that had been created for public benefit, commentary, news reporting, are likely to be found 'fair', though any element of commercialism will count against fair use. The nature of work looks at the use of the original work, such as whether an unpublished work was used; was the work factual or creative. Works based on unpublished ones, even

if proven to be parodies, are unlikely to be deemed 'fair' as an issue of violating someone's privacy is concerned. (Moser & Slay 2012, 209-210.)

Third factor, amount of original work used in relation to the copyrighted work as a whole, discusses what amount of the original work used is appropriate for the purpose of, for example, a parody. Parodies must be able to use enough of the original material for the audience to be able to recognise the original. Once enough elements have been taken for the original work's identification within the parody, courts look at whether taking any more from the original will have an economic effect on the original. (Gorman et al. 2011, 814-815.) The economic effect is determined by examining whether the newly created artistic work creates a new market or takes away from the commercial value of the original thus becoming a market substitution. If the complaining party can show any injury to their ability to sell the original work, newly created work is unlikely to be found 'fair'. (Strong 2014, 275-289.)

2.4 Public Domain

It is important to also address the definition and functionality of works that are in 'public domain'. These are the works no longer protected by copyright and have no 'owner' to claim the exclusive rights over. The public are free to use the composition and, possibly, the sound recording of thereof to create new works that are copyrightable.

A song can enter public domain if the author chooses to abandon their rights or when the copyright protection term expires. In the UK and Europe, the term is life plus 70 years after the death of the last author (provided work was co-written). In the US, works created before January 1st, 1978 but not expiring before December 31st, 2002 were given protection for 28 years with the right of renewal for another 67 years. Works that would have expired by December 31st, 2002 would continue to be protected until December 31st, 2047. However, for all works created and published in the US after January 1st, 1978, the term is life of the author plus 70 years. (Bargfrede 2017, 22-23.)

Some examples of works in the public domain would be the Happy Birthday Song, Silent Night and Amazing Grace. It is important to point out that public domain for sound recordings works differently. Just because a song is in the public domain does not mean the recording of it is. It has already been established that sound recording copyright is separate from that of a composition. Pre-1972 recordings will fall within the existing compulsory license system for digital transmissions, which currently only cover post-1972 recordings. (Public Domain Sherpa). That is, works recorded in the 30s need to be cleared with the rights owners even if the composition is in public domain.

2.5 Sets of music rights

Since a song is a combination of authorial and entrepreneurial works, comprising of a composition and its sound recording, the two elements are treated as separate and two sets of rights exist for the protection of copyright in both. The division of rights means separate music rights companies, revenue streams and licensing procedures.

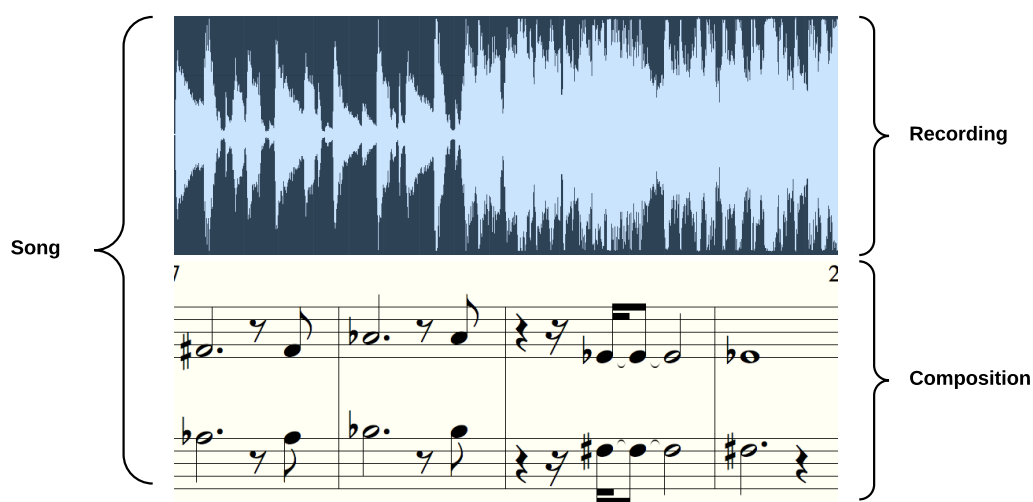


FIGURE 2. Elements of a song (Vasilkova 2020)

2.5.1 Copyright in songs

When speaking about copyright in a song, copyright in the underlying composition is implied. It is also known as ‘publishing right’, ‘song right’, or ‘author right’ under civil law systems (Cooke 2018, 22). Composition is considered to be an

authorial work as an original creation by an author and examples include lyrics, melody, sheet music, musical arrangements (Lowe 2017, 99). The copyright in a song is owned or co-owned by one or more songwriters, however, they can assign their rights to authorised agents, collecting societies and music publishers, who can license the works on their behalf depending on what control is being exploited as well as in what medium.

Every composition can be identified by its ISWC, International Standard Work Code, an identifier developed for data management. This code is registered and managed by the publisher, though, getting it in order is rarely a priority when communicating with other music business entities. Nevertheless, proper sharing and matching of ISWCs means accurate remuneration. (Lyons et al. 2019, 35.)

2.5.2 Copyright in sound recordings

A sound recording embodies a composition by capturing the performance by the artist, a singer, a band, or session musicians and its production, including setting up the recording session, mixing, mastering of the track, added arrangement. Sound recordings are protected by copyright and rights related to it are known as 'related', 'recording' or 'neighbouring' rights. Performers and producers, just like the master recording owners, have the rights to equitable remuneration for the use of their performance in public settings. (Lyons et al. 2019, 92.)

A sound recording, is classified as a derivative work because it is based on a pre-existing copyrighted work, the composition. However, the copyright created in a sound recording protects the unique combination and arrangement of sounds fixed in a physical medium in which the recording is embodied (such as a CD, or a computer file). (Moser & Slay 2012, 35.) It is owned by the party arranging for the recording session to take place which is usually a record label, but the right can be assigned to a music distributor. However, a sound recording can also be owned by an individual, the producer, if they are working independently from a record label. With the development in the technology and studio equipment, including software becoming more available, more so-called 'bedroom producers' become copyright owners in the sound recording. It is worth noting that the producer's input can be minimal and, in that case, they could not be entitled to any

share in the sound recording copyright that will be wholly owned by the performer. Vice versa scenarios are also possible.

As every composition is assigned an ISWC, each sound recording is identified by its ISRC, International Standard Recording Code. These codes can be found on every CD. Interestingly, while ISRCs are a mandatory requirement for a song's digital ingestion, ISWC is not necessary. It is also worth mentioning that to date, combining the two codes into a unified database has not been possible. (Lyons et al. 2019, 35.)

2.6 Licensing models

Anyone who wishes to use someone else's work must seek a permission. The process of authorising a third party to use copyrighted material is called licensing. Depending on who does the deal with the licensee, two main deal types are recognised: direct and collective. The main difference is whether a deal is done via a collecting society or not and what controls are being granted. (Cooke 2018, 27.)

2.6.1 Direct licensing

Direct licensing, or 'individual licensing', is when a deal is made between a user, service, or a business wishing to use a copyrighted work and the rights holder or their authorised agent, bypassing the need for a CMO, Collective Management Organisation. Historically, such deals have been used when licensing samples, adaptations, compilations and for synch licensing. (Cooke 2018, 27.) For example, direct deals with record labels are usually done when clearing a sample to use a recording master rights to which are owned by the record company; or when approaching a publisher for a permission to use a commercially released track in a video game.

With the introduction of streaming, the licensing landscape has changed. Record labels generally do direct deals with digital service providers and publishers have begun doing a combination of direct and collective licensing (Cooke 2018, 27-28). Direct deals are only relevant to US payments of mechanical rights for Anglo-

American catalogue and are favoured by major publishing companies. While publisher can withdraw mechanical rights from collective management to be licensed directly, public performance right often remains under the deal with a CMO. (Sobel & Weissman 2008, 34.)

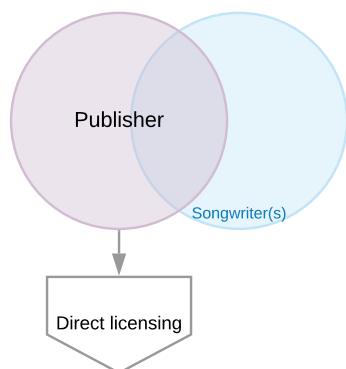


FIGURE 3. Visualisation of a direct deal tie (Vasilkova, 2020)

However, in the US a third term ‘compulsory’ or ‘statutory’ license on the mechanical rights is applied on the use of songs where publishers have not yet been able to withdraw their rights from the collective licensing organisation. Mechanical rights licensing of physical and digital products can sometimes be made more difficult if the copyright owner cannot be identified. In order to distribute copies of the copyrighted work, the third party can obtain a compulsory license by serving a Notice of Intent, NOI. Where there is more than one author to a work, it is sufficient enough to only serve a NOI on one of the co-owners. Where no copyright owners are identified, NOI is served on the Copyright Office. (Compulsory License for Making and Distributing Phonorecords 2018.) It is important to note, that a notice is to be served before a work is to be distributed and only non-dramatic musical works, such as opera, pantomime, motion picture, are subject to the licence. (Kohn 2019, 763-764.)

In 2019 a Music Modernization Act (MMA) was passed creating a new Mechanical Licensing Collecting (MLC) to eliminate NOIs and make it easier to license streaming and downloads. MLC is designed to offer blanket licensing and is to be funded by streaming services such as Spotify, Tidal, Apple Music. MLC is currently in the making and as soon as it is fully set up and functioning, NOIs will be no longer relevant. (The Music Modernization Act n.d.)

2.6.2 Collective licensing

Collective licensing model has been around for centuries and is a rights-based system where royalty is calculated based on the usage and takes into consideration a variety of variables such as how much of a song is used or where it is being used. At the frontline of collective licensing is a Collective Management Organisation (CMO) also known as a Performing Rights Organisation (PRO) that collects and administers royalties on behalf of publishers and songwriters for certain avenues such as licensing music for radio, TV, live performances, playing music in public spaces and even music on hold. CMOs offer blanket licences that cover all repertoire that the society has been mandated to manage by the copyright owner to license to groups of licensees. (Cooke 2018, 27.)

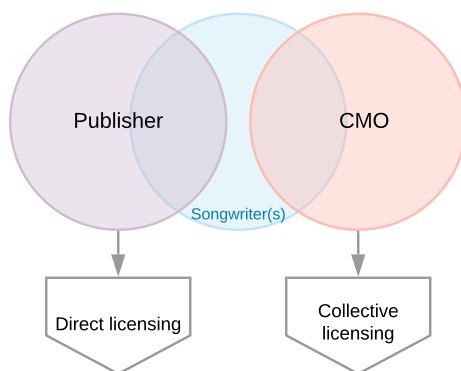


FIGURE 4. Visualisation of collective licensing ties (Vasilkova, 2020)

Licensing through a CMO gives you more transparency in regards to where and how your music is used. You are aware of the administrative fees and the data is public. Moreover, PROs are not-for-profit organisations meaning they charge a fee to only cover the administrative costs. (Music Answers 2015.) According to Rebecca Walker (Appendix 1, 2020), collective licensing gives you strength in negotiating deals. Some bigger publishers like Sony or Universal with strong repertoire have opted to go direct for certain rights, but they lose out on the services PROs provide. One of the biggest loses when going direct is not being a subject to the reciprocal agreements that CMOs have with foreign societies meaning by signing up with a collecting society in your home country you are automatically represented worldwide. In direct deals, collecting royalties from outside of your

home territory depends on your publisher's relationship with sub-publishers which could mean potential revenue loss. Publishers operate on a for-profit basis and commission rates are higher. In addition, publishers do not make the records of transactions publicly available. (Music Answers 2015.)

CMOs are controlled and regulated by the state making the composition licensing business a level playing field and balancing the competition law. The reason publishers are choosing to break away from collective licensing is that direct deals can be based on the "market value" of the songwriter causing the power of negotiating higher royalty rates. (Liu & Hilty 2017,190.) According to Damon Rickard (Appendix 1, 2020) a songwriter who does not have a lot of financial support will benefit more from being represented via a CMO, though already big songwriters do not need much assistance in promoting their music and can go direct with no risk.

2.7 Grand rights

'Grand' rights are a separate category of rights that require slightly different licensing routes. A grand right is the exclusive right to reproduce or perform a dramatico-musical work. A dramatico-musical work is a theatrical production, an opera, a pantomime, a musical and ballet for which the music has been specially written. Ballet is a separate category as it is defined as a choreographic work with an abstract idea interpreted by dancing or miming. These rights require a permission directly from the rights owner, most often a publisher. Performing Rights Organisations do not control the public performance right in these but can put you in touch with the relevant rights holder. (Kohn 2019, 1306-1309.)

3 COPYRIGHT OWNERSHIP AND ADMINISTRATION

3.1 Copyright ownership: Publishing rights

Now that we know what is protected by the copyright it is important to establish who administers it as every party involved in the relationship creator – work – user will have their own responsibilities, tasks, powers and a cut of the royalty pie as they manage specific rights on behalf of the rights holder. For example, using a song in a film requires licenses for public performance of the composition, sound recording, synchronisation license from the publisher. Things get more complicated as multiple CMOs can control different rights to the same work. Moreover, when there is more than one author, different institutions can control the same right for the same work.

3.1.1 Publishers

As we have already established, there is composition copyright and sound recording copyright, protecting publishing and neighbouring rights respectively. The connection between a composition and publishing is when a musical composition is complete, the songwriter owes the copyright and 100% of their publishing rights (Figure 5): right to reproduce, publicly perform and license their work for use on TV, digitally and in print. That is, 100% of composition copyright is split into two halves: writer's share and publisher's share, 50/50. Publisher's share can be assigned to music publishers, agencies set up to assist songwriters pitch their music for use across different media platforms as well as help manage revenue flow from the end user or service. Writer's share is split when there are one or more co-authors. Depending on the service, territory, financial considerations and time frames specified, there are various music publishing deals. The two most common deals are administrative and co-publishing. (Robley 2014.)



FIGURE 5. Illustration of composition right split (Vasilkova, 2020)

In an administrative deal, 10% - 25% of the gross income are given away in place of an administrative fee to cover services like registering your works with collecting societies, managing royalty collection and pay-outs. Usual term for such deal is 1-3 years and can include an advance that is paid out from the royalties you earn for the use of the copyrighted work. It is important to note that under the administrative deal, publishers do not own any part of copyright for your work rather assist in daily administration, hence no creative support, such as pairing you up with other songwriters, is offered. However, the main advantage of having a publisher remains – using publisher’s connections with foreign publishers and collecting societies. (Clair 2018.)

Second most common type of a deal between a publisher and a songwriter is a co-publishing deal. Co-publishing agreements are usual for major songwriters who already have an extensive catalogue of works and connections and do not require the entire spectrum of services from publishers. Under this deal copyright ownership is split 75% to 25% in favour of the songwriter (Figure 6). (Output n.d.) Meaning, as well as owning the writer’s share in its entirety, they also own 25% of the publisher’s share. That, in its turn, means that the publisher will only offer services agreed in the contract and fair for their 25% share.

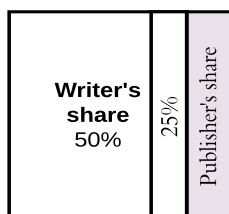


FIGURE 6. Illustration of a co-publishing deal (Vasilkova, 2020)

In Europe, according to Andreas Broden (Appendix 1, 2020), most common songwriter – publisher split, is 66.66% to 33.33% which means the writer keeps 100% of their half of writer’s share as well as 16.66% of publisher’s share. Services and responsibilities that the publisher will be fulfilling will be specified in the agreement and are very individual.

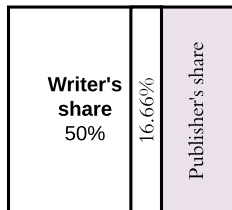


FIGURE 7. Illustration of a publishing deal in Europe

3.1.2 Collective management organisations

Collective management organisations are also known as PROs or Performing Rights Organisations are agencies authorised to issue the non-exclusive rights to public performance to third parties on behalf of the rights holder. Their main responsibilities include issuing licenses, monitoring performances and royalty allocation and distribution. PROs can license radio stations, bars, hotels, shops, music festivals and other users through blanket licensing agreements enabling the licensee to use any work within the PRO’s catalogue. (Gorman et al. 2011, 769.) There are CMOs that cover public performance royalties for the use of a composition and separate CMO looking after the performance of the recording. Interestingly, in, for example, Finland CMOs are authorised to license musical compositions for cover versions. Though it is more common to seek approval from the publisher.

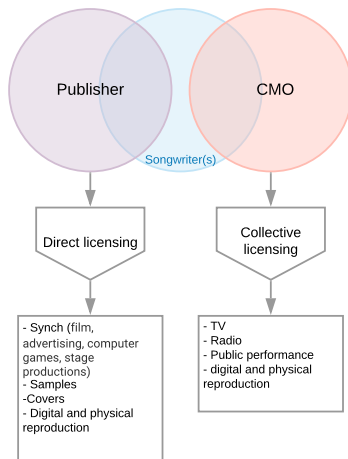


FIGURE 8. Direct and collective licensing of publishing rights (Vasilkova, 2020)

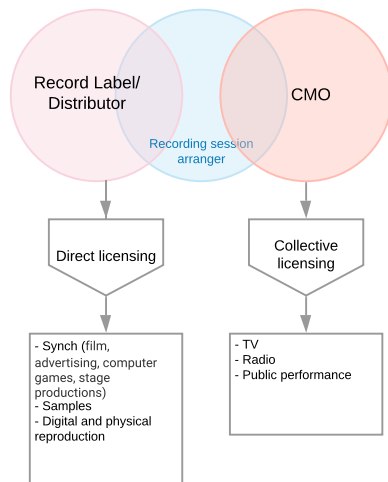


FIGURE 9. Direct and collective licensing of neighbouring rights (exc.US) (Vasilkova, 2020)

The way collecting societies are set up can differ from country to country. That is, in the UK there is a collecting society administering performance right for composers, PRS for Music and a separate society handling those for sound recordings, PPL (Phonographic Performance Ltd). In the US the situation is slightly different and while there are ASCAP (American Society of Composers, Authors, and Publishers) and BMI (Broadcast Music, Inc.) protecting the performing rights on behalf of composers, sound recordings, under the Copyright Act of 1976, do not enjoy the same right. Public performance of a sound recording via analogue transmission is considered as promotion and marketing of the work hence radio,

TV, or even a live performance of a song in the US does not generate a royalty for the artist or the record label.

PROs charge licensees a fee for every license they issue and these vary based on a few factors such as whether an event is a one-off or re-occurring; for establishments, the fee takes into consideration such variable as seating capacity, type of event, admission charges. PROs apportion and distribute royalty according to the set lists and programmes that they collect from every source they manage. Thus, radio stations submit outputs from playout systems where every song played around the clock is identified. Festivals provide set lists for every performance; smaller live events offer programmes. This information is then entered into bespoke system and saved.

In the UK, PRS for Music administers the public performance right and pays its members, publishers and composers, songwriters, revenue generated by their works. According to Damon Rickard (Appendix 1, 2020) PRS pays out 50% to the writer and 50% to the publisher as writers must be in possession of at least 50% of the share of their work.

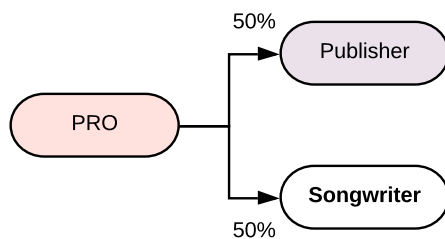


FIGURE 10. Default royalty flow from a PRO (publishing rights) (Vasilkova, 2020)

However, as we already know there are different types of publishing deals. Rebecca Walker (Appendix 1, 2020), explains that publishers never receive more than 50% of the performing right revenue, and Damon Rickard (Appendix 1, 2020) confirms that writers receive 50% regardless of the deal they have with the publisher; the publisher is responsible for accounting and distributing the difference back to the writer according to the share split agreed upon. (Sobel & Weissman 2018, 35.)

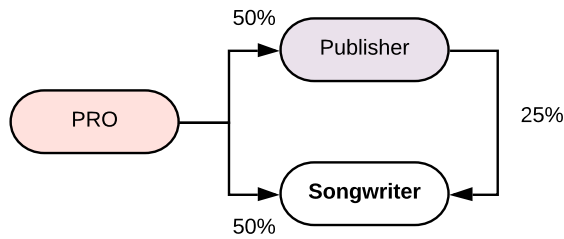


FIGURE 11. Royalty flow from a PRO in a co-publishing deal (publishing rights) (Vasilkova, 2020)

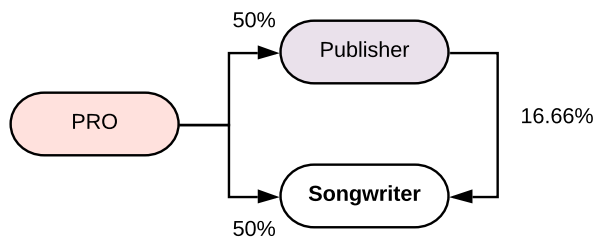


FIGURE 12. Royalty flow from a PRO in a European deal (publishing rights) (Vasilkova, 2020)

3.1.3 Mechanical rights licensors

The right to reproduce a sound recording comes with the master right obtained from the master recording rights owner, usually the record label. However, the right to reproduce a composition in any medium, be that a sound recording, a CD, or in a form of a digital file, is called a mechanical right. For songwriters receive the royalty generated by third parties exercising the right to reproduce the copyrighted work, writer needs to be registered with a mechanical right collecting society or be affiliated with a publisher (in the US).

MCPS (Mechanical-Copyright Protection Society) is a UK based mechanical licenses administering body that tracks and pays royalty to its members whenever a copy of a composition is made. You must be a member of MCPS or another mechanical right collecting society in order to receive the royalty from streams on Spotify, digital downloads, or physical sales if you do not have a publisher.



FIGURE 13. Mechanical royalty flow under collective licensing (UK) (Vasilkova, 2020)

Harry Fox Agency, is an entity that administers mechanical licenses and processes royalty payments to its members in the US. HFA handle mechanical licenses for physical and digital distribution. Previously, mechanical license could be obtained in two ways, by serving a Notice of Intent or NOI to the copyright holder, or dealing with licensing clearing houses such as MCPS in the UK and Harry Fox Agency in the US. (Strong 2014, 216.) A NOI could be sent to the Harry Fox Agency who, in their turn, would communicate with its publisher members, however, not all publishers are members of HFA. In addition, HFA is not authorised to issue compulsory licenses for making and distributing phonorecords and such should be filed with the publisher directly. (Harry Fox Agency FAQs n.d.) Other mechanical license administration agencies are MINT, who offers mechanical licenses on behalf of publishers and HFA on a multi-territorial bases for online usage.

In the US and Canada, the rate for mechanical licence generated royalty is set by the Copyright Royalty Board, CRB, and currently for physical copies and permanent digital downloads the rate is \$0.91 for composition equal to or less than 5 minutes and \$0.175 per minute for recordings of compositions longer than 5 minutes. (Bargfrede 2017, 47). In Europe, the royalty is based on PPD or Published Price to Dealer which is the record company sales price to retailers. Current rate is 8.712 % of that price. (Royalty Exchange 2019.) For example, MCPS charge 8.5% of PPD whilst HFA - \$0.91, the statutory rate. On the other side of the spectrum are the administration fees. HFA charge commission rate of 11.5% of the gross income before passing the royalty on to publishers while MCPS – 15% for physical distributions, 10% for digital downloads. (Harry Fox Agency FAQs n.d.; PRS for Music. “MCPS mandates and exclusions” n.d.)

3.1.4 SPVs

With the birth of digital distribution, some publishers choose to administer mechanical rights for the use of their catalogue online directly, this is especially true for their Anglo-American repertoire. This started as a result of the European Commission Recommendation that encouraged writers to withdraw from their CMOs and enter into direct deals that can be set up between a publisher and a PRO or a publisher and a copyright hub and are referred to as ‘Special Purpose Vehicles’, SPVs, legal entities set up for a limited purpose for the major and independent international publishers. (Lyons et al. 2019, 89-90.)

For example, SONY/ATV Group’s Anglo-American catalogue’s mechanical rights for digital distribution are administered by SOLAR, a multi-territory SPV that is owned by PRS and GEMA (a German collecting society); as well as matching performing rights brought to SOLAR by PRS and GEMA via the agreements that these two societies have with other Anglo-American collecting societies such as IMRO, the Irish Music Rights Organisation). (European Commission 2018, 23.)

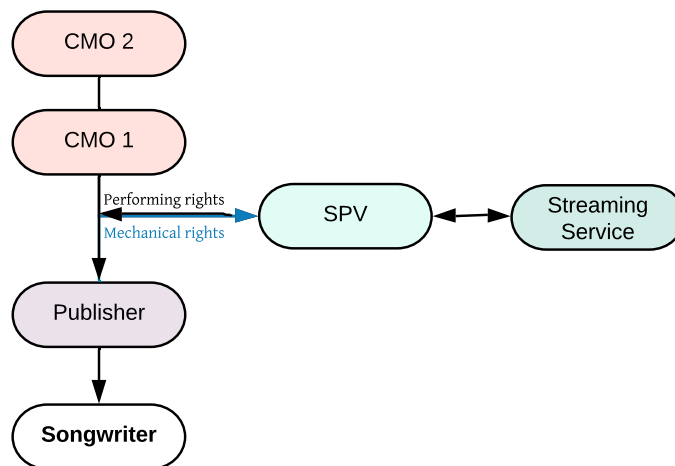


FIGURE 14. Licensing model through an SPV for Anglo-American repertoire (Vasilkova, 2020)

Other special purpose vehicles are Universal’s DEAL (Direct European Administration and Licensing), a joint venture with SACEM (Society of Authors, Composers and Publishers of Music in France; PEDL (Pan European Digital Licensing) is a joint company between Warner/Chappell and PRS; BMG teamed up with

GEMA to form ARESA (Anglo-American Rights European Service Agency) (ARESAs n.d.) and Kobalt which do direct licensing deals via AMRA. (Cooke 2018, 71.) In order to increase transparency and meet the demands of the European Union's Collective Rights Management directive, Independent Music Publishers e-Licensing organisation IMPEL broke away from UK's MCPS in order to offer direct mechanical licensing services to independent publishers. (Awbi 2018.)

3.1.5 Copyright hubs

Some collecting societies set up joint ventures in order to provide multi-territory licences and to facilitate the whole process of acquiring a nonexclusive right to use a copyrighted work. Such agencies are called 'copyright hubs' and one of the most prominent examples is ICE, International Copyright Enterprise, organisation founded in 2010 bringing together Swedish collecting society STIM, German collecting society GEMA and UK based PRS for Music. (Lyons et al. 2019, 30.)

Copyright hubs can offer a variety of services including collecting and processing data from licensees and passing it on to the home collecting society for royalty payments. They provide online processing services that allow for transparency in data matching, user reports, royalty calculation to name a few. ICE also offers one-stop licensing for digital service providers, DSPs, on behalf of collecting societies and selected publishers, Downtown Music Publishing. (ICE Services n.d.) Another example of a copyright hub is ARMONIA, a joint venture of SACEM (Society of Authors, Composers and Publishers of Music, France), SGAE (Spanish Society of Authors and Publishers) and SIAE (the Italian collecting society) (Lyons et al. 2019, 30).

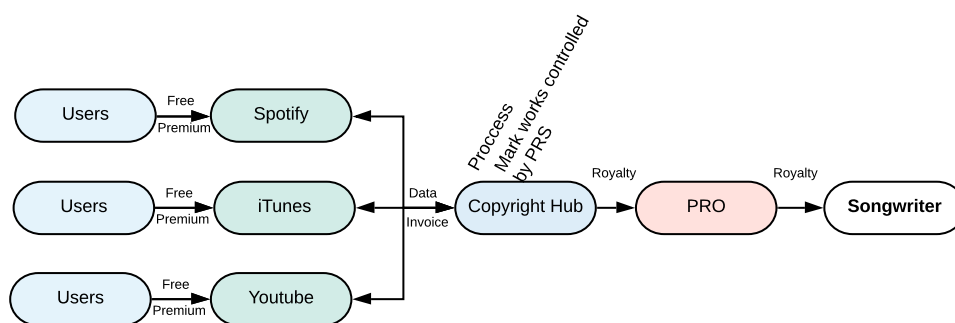


FIGURE 15. Illustration of how a copyright hub operates (Vasilkova 2020)

3.2 Copyright ownership: Neighbouring rights

3.2.1 Record labels

Record labels are powerful music industry companies that invest in artists and their music. They offer A&R support as well as funding, marketing and promotion, distribution, song production, licensing the use of the master recording in film or compilation album. (Spinnup n.d.) The recording industry is divided into major record labels 'the majors' and smaller, independent record labels, 'the indies'. Today, three major record companies exist: Sony BMG, Universal Music, Warner Music; the rest are indies. The difference between the two categories is that the majors are usually conglomerates that have own in-house publishing and distribution services whilst indies are smaller record labels that use external vendors. What is also important to note, is that indies tend to have a higher artist royalty percentage compared to majors. (Ostrow 2010.)

The royalty split the artist receives depends on the record deal they sign. A record deal is a contract between the label and the artist where any advances, such as a sum of money given to the artist to make a record, term of the deal, how many albums, singles artist is to release on that label and other details. The label will also pay the artist a share of revenue from recording sales, merchandise, touring, etc. However, the rates vary from country to country and a big role in the percentage paid to the artist play the advances. Major record labels offer advances and their recoupment will be deducted from artist's royalty share until they are fully paid out whilst indie record labels split the costs evenly meaning the royalty is also split 50%/50%. (AWAL 2019.)

In Europe, artists also receive royalties from public performance of the master recording on the radio, in cinemas, at festivals, live music venues, and for other non-private uses. These royalties are paid by a CMO via a collective licensing deal where artists or record labels appoint a collecting society to license songs on their behalf. In the UK, PPL are the sound recording right equivalent of PRS.

(Cooke 2018, 27). In the US, however, sound recordings when broadcast on terrestrial radio, TV, or in general when transmitted to the public do not generate public performance royalties.

3.2.2 Distributors and aggregators

Distributors and aggregators are delivery platforms that bring the music to user-facing businesses, physical and digital. They work directly with record labels, big or small, and unsigned artists offering services that range from CD duplication and replication to mastering and release promotion. Depending on the type of service required or who is responsible for the release, distributor or an aggregator will be used. Aggregators deliver content for artists and labels to Spotify, Apple and other digital service providers. They are the delivering platforms that maintain the ingestion hardware and manage the entire process. One of the most used aggregators is CD Baby that does both physical and digital deliveries. (Voogt 2019.)

A distributor, on the other hand, offers a wider range of services compared to an aggregator. Their services could include promotion, playlist pitching, financial advances, licensing and royalty management. Other types of distributors are: artist distributors, label distributors and delivery platforms. All offer different services. For instance, artist distributors are for independent artists who are not signed to a record label and services like CD Baby will take care of licensing, distribution and royalty pay-outs. Label distributors, such as The Orchard, are designed to help labels and will also cover licensing and royalty administration. Finally, if you do not need licensing services you can use the likes of FUGA that will distribute, promote and market your catalogue. (Provider Directory n.d.)

4 LICENSING MUSIC AND REMUNERATION PRE- STREAMING

4.1 Terrestrial radio

One of the key revenue streams for both composers and performing artists is radio plays. A radio play generates royalty for the public performance of the composition, administered by PRS for Music in the UK and the sound recording, managed by PPL. When we discuss radio plays, we talk about broadcast on terrestrial radio, or AM/FM.

Radio stations submit two reports: one to PRS, one to PPL and the royalty is calculated based on the usages within these reports and there are three methods that are used: pay-per-play which is essentially a per minute rate; sample collection – sample dates are assigned throughout the year and music played within 24 hours on the given days is taken as the basis for calculation; third method is usage and analogy – when it is not cost-effective for smaller radio stations that are genre-specific, for example top hits radio stations, to track every single piece of music aired. Once the base royalty is known, it can be paid out its members, publishers and songwriters. (PRS for Music. “Radio royalties” n.d.) In the US the landscape is different. Performing artists do not enjoy royalties from radio plays on terrestrial radio which means only the songwriters receive compensation.

According to Rebecca Walker (Appendix 1, 2020), on a larger scale, composers receive fair remuneration for radio plays however there are still issues obstacles where members do not register with any society or not register their works meaning a gap in the royalty chain. There is still no robust pay-for-play distribution and small radio stations are having to be invoiced based on analogy data.

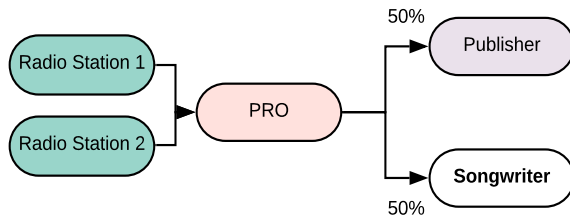


FIGURE 16. Data and royalty flow for use of song rights (UK model) (Vasilkova, 2020)

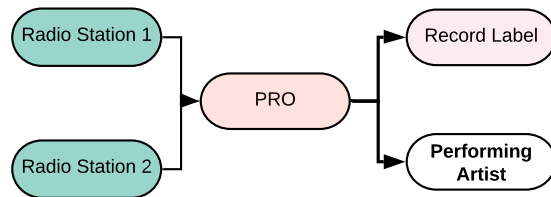


FIGURE 17. Data and royalty flow for use of neighbouring rights (UK model) (Vasilkova, 2020)

4.2 Synch licensing

Motion pictures, adverts, video games, TV programmes, any media where an audio element is being layered with the visual, requires a special type of license. In other words, if you wish to use a copyrighted work, such as a commercially released composition, in your upcoming movie, you would be approaching a record label and a publishing company for the master and ‘synch’ rights. The record label will grant you a non-exclusive right to use the sound recording via the master rights; and the publishing company or CMO, varies based on music and territory, will license the reproduction right that is known as the ‘synch’ right for the use of the composition in your film. (Cooke 2018, 48-49.)

‘Synch’ right is a mechanical license but for use in audio-visual media and typically, you would be approaching a CMO for the appropriate rights and controls, such as PPL for the master rights and MCPS for the use of the composition in the UK. However, where the rights holder has not granted their society a mandate to offer such license on their behalf, a CMO can put you in touch with the copyright holder directly. (PRS for Music. “Commercial Music Sync Licensing” n.d.)

For bigger commercial hits you would have to go straight to the publisher for a permission. As an example, if you want to use Billi Eilish’s repertoire in an ad, you would be contacting Universal Music Group for a synch licence. (Universal Music Publishing 2019.)

Once all the necessary rights had been obtained, the new film comes out and is viewed by the public, the royalty will begin to accumulate and the flow of the revenue depends on who owns the exclusive right. Some publishers will offer a flat fee for the purchase of synch rights and fees range from \$10,000 to \$250,000.

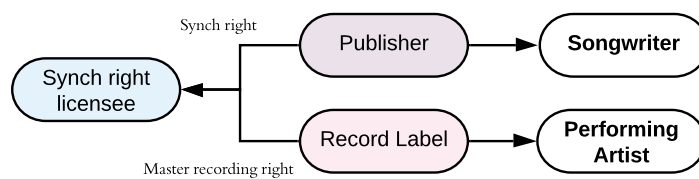


FIGURE 18. Synch right licensing (Vasilkova 2020)

Synch generates two revenue streams where screening of a TV show, video game, or a film publicly will be reported by the establishment that has a public performance license in their returns to the PRO. (Emenau 2014.) For instance, cinemas have a PRS and a PPL license and at the end of their reporting period they will submit a report to each PRO listing all films screened. The latter will then calculate the royalty and make payments to publishers, songwriters, record labels and performing artists according to the cue sheets that had been prepared by the responsible production company. (Gordon 2015.) Again, in the US the situation is different for the performing artists and labels since they do not receive neighbouring rights royalty unless the sound recording is being transmitted digitally, for example, on YouTube.

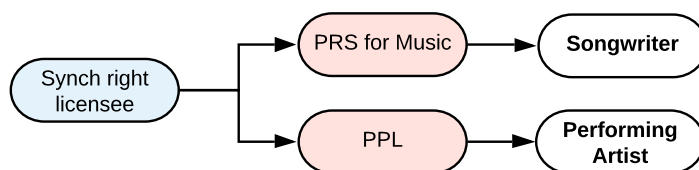


FIGURE 19. Synch right revenue (UK model) (Vasilkova 2020)

4.3 Physical sales

Physical record sales used to be the greatest source of income for performing artists before the streaming phenomenon. The mechanism was straightforward though intricate and began in the recording studio. Record labels initiate physical goods releases to date and how CDs have historically been licensed and put on the shelves in record stores gave way to current licensing models. Starting when the production of an album or a single is complete, the label seeks to secure a mechanical licence authorising the reproduction of a composition on each CD from a publisher or a collecting society representing the songwriter. Most manufacturers will not press any CDs until they see the proof of a mechanical license. (Music Licensing for Physical, Audio-only Products n.d.) Once a licence has been acquired, the label finds a distributor or, as in the case with major record labels, uses an in-house distribution service. For example, Sony Music distribute their releases through Sony Music Entertainment.

When the records hit the shelves and sales are underway, revenue is made. Retail stores pay the distributor which deducts its share from retail price, according to Donald Passman (2015, 218) typically 20% - 25% from retail price and the rest goes to the label or most commonly the label is paid based on the wholesale price. Wholesale price means the price paid by the retailer. Main artist, featured artist, session musicians, they all get paid according to their contracts but rough estimate is this is around 10% - 20%. This is a very basic calculation and there are many factors that will cause the royalty percentage to fluctuate. For example, packaging charges, promotional CDs, recoupable expenses (producer's costs, legal, accounting, etc.), taxes. (Brain n.d.) Average packaging prices for CDs amount to 20%-25% deduction. Record labels, depending on the deal, might secure 50%-60% of the revenue (McCormicks Law 2013).

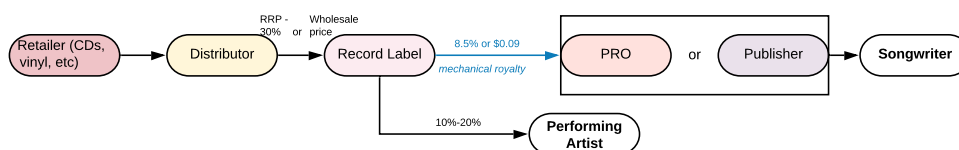


FIGURE 20. Royalty flow for physical products (Vasilkova 2020)

Songwriter's royalty from CD sales is the mechanical license acquired prior to distributing the CDs. When we know the revenue generated, for instance, £6,500 made in the example above, in the UK, 8.5% of £6,500, £520 is the mechanical royalty paid to the copyright holder, publisher and songwriter. The split between the two according to the terms agreed on in the contract and vary from publisher to publisher and country to country. (Sentric Music 2017.) In the US, songwriters receive their mechanical royalty upfront, \$0.091 per unit or for any tracks longer than 5 minutes - \$0.0175 per minute. (Rate Charts n.d.)

TABLE 1: Traditional physical sales royalty split (Vasilkova, 2020)

	Units sold	Wholesale price per unit
Units sold	1000	£6.50
Total revenue to label	£6,500	
	Split (%)	Split (£)
Label	50% - 60%	£3,250
Mechanical royalty (UK) or	8.5%	£552.5
Mechanical royalty (US)		\$0.0091 per track
The Artist	10% - 20%	
Of which free goods	10%	
Of which packaging	20% - 25%	
Of which advances recoupment	4%	

For indie record labels the 'Net Profit Deal' is most common. The conditions of such a deal are that once the label received the revenue from sales, less the distributor fee, they will deduct the expenses, such as promotion, marketing, CD manufacturing, recording costs, etc. and split the remaining 'net' income 50%-50%. (Day n.d.) Since the label keeps 100% of the revenue until all expenses have been paid, the incentive for artists to enter such deal is that the artist will receive a higher share of royalties. That said, labels might include an 'Overhead Fees' clause in the contract that introduces 3% - 10% deductions to artist's royalty share to cover administrative and corporate costs. (Soundcharts 2020.)

TABLE 2: 'Net Profit Deals' physical sales royalty split (Vasilkova, 2020)

	Units sold	Wholesale price per unit
Units sold	1000	£6.50
Total revenue to label	£6,500	
	Split (%)	Split (£)
Expenses	66% - 75%	
Mechanical royalty (US) or		\$0.0091 per track
Mechanical royalty (UK)	8.5%	
Label	50%	
The Artist	50%	

5 MUSIC LICENSING AND REMUNERATION IN THE DIGITAL ERA

5.1 Digital music consumption

In 2001 Apple brought up iTunes, an online record store and in 2005 sales via iTunes started to overtake physical sales (Waniata 2018). Following that, in 2008 the music arena welcomed Spotify and since then the sales of CDs have been decreasing by 10 million units per year. (BBC 2019) As of 2019, streaming alone accounted for nearly 80% of all revenue generated by the recorded music industry, or \$8.8 billion. (Perez 2020.) Physical sales shifted down to representing only 10% of all recorded music revenue whilst in 2002 and according to Nick Routley (2018) CDs came up to 95.5% of the recording industry's revenue.

What has also shifted is licensing and royalty remuneration. The industry has had to adopt and build new business models, though some are very reminiscent of old CD licensing. The rights required, in order to have a song available online, whether for downloading or streaming, are the master rights, mechanical rights, public performance rights. Change to digital has even affected the US legislation and with the introduction of Digital Transmission Public Performance Right that came with 1995 amendment to §106 and §114 the copyright law offered artists and producers coverage by means of digital audio transmission. (Gorman et al. 2011, 778.) That is, if previously artists were not getting paid for public performance of master recordings, now they are entitled to public performance royalties when songs are broadcast digitally.

5.2 Permanent downloads

A permanent download is a track that is stored on your computer's hard drive and does not require internet connection for playback. iTunes, Amazon both offer such services. They are the online version of a traditional record store with the only exception that you can purchase one track at a time and are not tied to a full-length album. These downloads can be offered in a variety of formats including mp3 and WAV (common for CDs). (Music Licensing for Digital Downloads n.d.)

In the UK the composition licensing for service offering permanent downloads comes with a Music Download Licence issued by PRS for Music. This is a blanket license that covers the public performance and mechanical rights of repertoire represented by PRS. (PRS for Music. “Music Download Licence (MDL)” n.d.) The royalty used to pay its members is calculated based on the 8% of wholesale revenue (PPD) or minimum fee per download. PRS will take the greater. (PRS for Music. “Retail audio products” n.d.)

For mechanical rights that are not included in the blanket license issued by a CMO, PRS in our example, the service must go to the publisher to clear the reproduction rights. In cases where download services make direct deals with the publisher, the publisher receives 100% of the revenue and then passes on the previously agreed share to the writer. As with all collective deals, CMOs split the revenue 50/50 and the writer gets a half of the revenue directly. (Cooke 2018, 59.)

On the recording side, downloads are treated very similarly to physical products. neighbouring rights are not licensed collectively, they are licensed directly through the recording rights holder such as the record label. (Online licensing n.d.) In the UK in a direct deal the label received the wholesale price of download (Cooke 2018, 59). One of the advantages of digital downloads for artists is the absence of any packaging costs.

In the US there are no public performance rights on a download, only reproduction rights are being exploited. Hence, the label is responsible for paying out the mechanical royalty to the publisher, the rest is split according to the artist- label agreement. Usually, the service offering downloads keeps around 30% from each sale, remaining 70% are paid to the label. Artist’s royalty, just like in physical sales, constitutes around 12 – 15%.

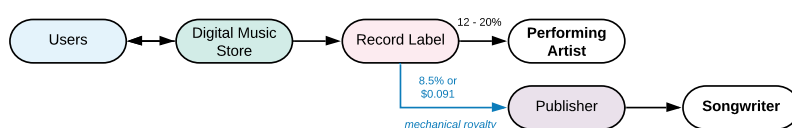


FIGURE 21. Royalty flow for permanent downloads (Vasilkova, 2020)

When service is licensed via an aggregator or a distributor, they become the link between the record label and the digital store and artists who own the master recording copyrights but use services like CD Baby receive 90-10% of the revenue from the aggregator they use. Then, it is the artist’s responsibility to pay the mechanical license fee (provided that the party that owns the master recording copyright is different from one holding the composition copyright). (Waczek n.d.)

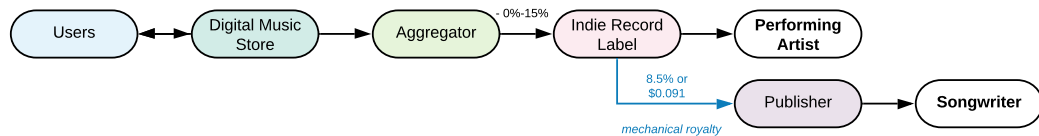


FIGURE 22. Royalty flow for permanent downloads via an aggregator (Vasilkova, 2020)

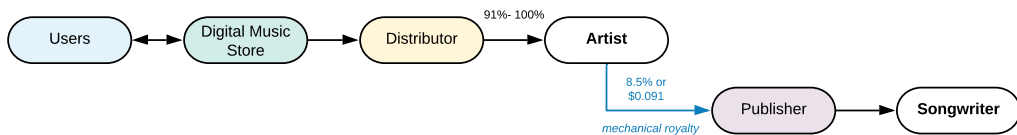


FIGURE 23. Royalty flow for permanent downloads via a distributor (Vasilkova, 2020)

TABLE 3. Estimation of digital download revenue split (US)

Cost	100%	\$0.99
DSP	-30%	\$0.297
Label	-70%	\$0.693
Of which artist’s royalty	-10% - 20%	\$0.10
Of which mechanical royalty		\$0.091

5.3 Interactive streaming

Interactive or on-demand streaming is the biggest source of revenue for recorded music industry globally. Total revenue amounts to 47% of which 10% is ad-supported streams and 37% - subscription plan streams. As stated in the IFPI’s Global Music Report for 2019 (Appendix 2, 2020), biggest music market, as of 2018, was secured by the US. Streaming services’ business model is based on

offering access to unlimited content available on demand. Newest releases are available as soon as they are released and you can even download the tracks you like for offline listening, also referred to as 'tethered downloads', crucial for great user experience. (Bargfrede 2017, 97.)

5.3.1 Licensing on-demand streaming services

Streaming services or Digital Service Providers, DSPs, license recording rights directly with record labels or use aggregators, depending on whether the artist is signed or not, funds available and size of the record label. Universal, Sony and Warner license recorded music directly and use in-house distribution services to deliver product to digital platforms. However, independent labels are mostly licensed through digital rights body Merlin, a not-for-profit organisation, that negotiates global deals on their behalf. (Merlin n.d.)

Licensing a composition within the recording is more difficult due to the process being very fragmented because a) it is a combination of direct deals and collective licensing; b) rarely done on a global basis, these are territorial; c) there can be multiple deals comprising the 100% of a composition and unlimited number of contributors who could all be registered with a different collecting society/ publisher; d) mechanical licence might have to be obtained from yet another party.

Public performance and mechanical rights of a composition can be licensed in a few different ways: via a CMO; a copyright hub; via an SPV. If a streaming service operates in its home territory only, it is enough for them to secure the public performance and reproduction rights through their local CMO. However, for international streaming services the license they obtain must enable them to operate in each territory where it is live. Sony/ATV Music Publishing, Universal Music and Warner/Chappell use SPVs to license music directly with DSPs. (Kohn 2018, 215-216.) Each SPV had been set up to represent reproduction rights controlled by its parent publisher company, of Anglo-American catalogues. These SPVs can also represent the performing rights, but publishers must seek a permission from the relevant CMO that will also approve the licensing terms. As an example,

Sony/ATV's and EMI Music Publishing's catalogues' mechanical and public performance rights are represented by SOLAR in partnership with ICE across the EU (PRS for Music. 2018).

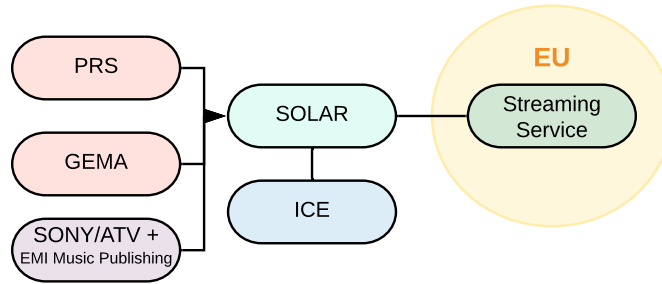


FIGURE 24. Illustration of SONY/ATV's repertoire licensing for EU via an SPV (Vasilkova, 2020)

Situation gets even more complicated when there are more than two writers to a song. Every songwriter might have a deal with different publisher and, in case of US, be affiliated with different CMO. Therefore, when DSPs license songs they have to ensure they have deals with SOLAR, DEAL, PEDL, ARESA and AMRA as one songwriter might be managed by Warner and own 40% of a song, 30% are controlled by Sony and remaining 30% by Universal. (Cooke 2018, 72.)

It is worth noting how different and fragmented the composition rights system is in the US. There, there are four collecting societies that control performance rights to different catalogues. These are ASCAP, SESAC, BMI and GMR (Global Music Rights). Digital music platforms must obtain blanket licenses from each of these societies in order to cover performing rights in the US, which in Europe it is common for only one society per country/ territory to exist making it easier to license public performances. (Cooke 2018, 72.)

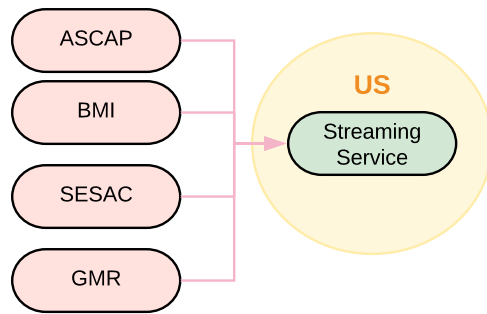


FIGURE 25. Illustration of obtaining public performance licenses in the US (Vasilkova, 2020)

Licensing the mechanical rights in the US, though, is very different to licensing those in Europe because no CMO offering blanket mechanical licence exists. The compulsory licence system allows DSPs to use works provided they have made a reasonable attempt to identify and locate the rights holder in order to serve them an NOI. Unfortunately, this information is not readily available and many streaming services rely on record labels to provide publishing data to their products. (Cooke 2018, 72-73.)

5.3.2 Royalty generated by on-demand streaming services

Current royalty distribution model for all major streaming service providers, 'pro-rata' model, relies on a big pool of revenue split by overall share of all the streams on the platform (Dredge 2018). Premium and ad-powered subscriptions generate revenue with the former being biggest income generator. All of the money that comes in on to the streaming platform is then divided according to deals and license agreements record labels, publishers, CMOs have with the digital service provider. Based on the traditional CD distributors' cut of the revenue, DSPs keep around 30% - 40% of all revenue sharing from 60% - 70% with the rights holders. (Cooke 2018, 78.)

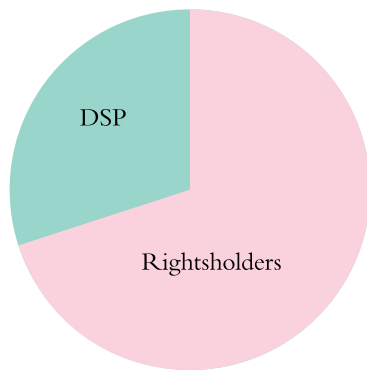


FIGURE 26. Total revenue split between the DSP and rights holders (Vasilkova 2020)

According to Gary Eggleton (2020) streaming share on the global market growing, revenue is now indeed being spread more evenly for some record labels. Eggleton (2020) went on to share that 52% of revenue is sent to the labels. That portion is then divided amongst over 270 different agreements. He stated that the likes of Merlin and Kobalt are ones making it possible for artists to earn a fairer share as labels & artists distributing through Merlin receive more revenue because of Merlin's low commission rates it being a not-for-profit organisation. Kobalt distribute music via AWAL and artist keep 85% of revenue from DSPs (AWAL How it Works n.d.) However, those signed to major record labels receive only 1/4th of total revenue.

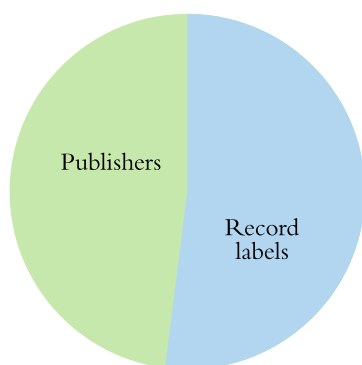


FIGURE 27. Rights holders revenue split for streaming (Vasilkova, 2020)

The total revenue allocated to the record labels is then divided according to labels' market shares. For example, Universal Music's global recorded market share in 2018 was 31%, Sony's – 21% and Warner's – 18% making it 70% total

global market share leaving 30% for indie record labels and unsigned artists. (Mulligan 2019.) So, if Universal's market share is 31% and a DSP allocates 52% of its total revenue to labels, Universal takes away 31% of the 52%. If the license is negotiated by an aggregator, the royalty goes to the aggregator that takes a commission before passing the rest on to the record label. Commission rates vary from no commission to 15% (K-Pizza n.d.).

Back in 2015 it was reported that from every €9.99 monthly subscription labels kept 73% of revenue. According to SNEP, a French recorded music agency, only 16% of revenue paid by the streaming service goes to publishers and songwriters, labels pay around 11% to the artist. (Ingham 2015.) Though other sources state 15% - 20% of royalty goes to the artist. (Music Managers Forum 2016, 35.) To demonstrate better how revenue split works, we take theoretic total monthly revenue for DSP of £1,000,000 and break the revenue down for the record labels as follows (TABLE 4).

TABLE 4. Record label revenue break down (Vasilkova, 2020)

	Share in %	Share in £
Total revenue	100%	£1,000,000
DPS	35%	£350,000
Record labels	52%	£520,000
Of which Universal	31%	£161,200
Of which Sony	21%	£109,200
Of which Warner	18%	£93,600
Of which Indies & other	30%	£156,000
Publishers	13%	£130,000

Publishers are set to receive approximately 13% which is the reproduction royalty set by the CRB. Since 2017 it has been a minimum of 10.5% of total streaming revenue excluding the public performance royalty. (Kilhefner n.d.) In 2018, the CRB published their decision to work towards increasing the compulsory mechanical rate to 15.1% of the streaming revenue every year until 2022 making it a 44% increase overall. In 2019 the total royalty paid by streaming services to publishing sector was 12.3%, in 2020 it is set to rise to 13.3%, 2021 will see increase to 14.2%. (Music Business Worldwide 2018.) The 13.3% revenue of

gross revenue is then divided by the number of streams which generates a per-stream royalty. The per-stream royalty also takes into consideration a variety of factors, such as number of users, stream counts, tier, country, product and pro-rate share. Tiers mean subscription plans: free and premium where premium subscriptions generate higher per stream royalty rate than ad-powered free plays. (Resnikoff 2013.) In the US, around 50% of the per-stream royalty is allocated to CMOs for public performance.

TABLE 5. Publishers' revenue split breakdown using mechanical royalty rates for 2020 (US) (Vasilkova, 2020)

	Share in %	Share in £
Total revenue	100%	£1,000,000
DPS	35%	£350,000
Record labels	52%	£520,000
Publishers	13.3%	£130,000/number of streams
Of which mechanical	50%	
Of which public performance	50%	

DSPs largely rely on publishers to provide them with the correct songwriter/publisher split information so DSPs can establish the total number of streams for a particular artist and calculate the royalty. Once the per-stream royalty rate is known, streaming platforms compare it to the per stream minima for each tier. For example, if the per-stream rate under the free tier is lower than \$0.00225, the latter is paid. (Singleton 2015.)

5.4 Non-interactive streaming (internet radio and webcasting)

Streaming service without the ability to choose songs is called webcasting or internet radio. Users can select radio station based on proffered genre or even create a station based on your artist preferences. The characteristics of an internet radio are:

- Non-interactive
- There are no program schedules, upcoming tracks announcements
- Each track should display performing artist, track title credits

- Any scheduled programs should be at least 3 hours long; any recorded programs available on demand, should be at least 5 hours long and be available on the platform for no more than 2 weeks
- There should be no images displayed with sound recordings in a manner suggesting any affiliation between the two
- A service cannot transmit any tracks that had not yet been released for broadcast to the public (Bergfrede 2017, 100-101.)

The business model of an internet radio is similar to the streaming model: there are ad-powered and paid subscriptions. On average, paid subscription is around \$5 making webcasting a less profitable option for rights holders. In the US public performance on non-interactive webcasters such as Pandora and Sirius FM, is handled by SoundExchange. SoundExchange comprise 14% of the US recorded music industry's revenue and since it went live has distributed over \$7 billion. Webcasting services in the US are subject to statutory licensing and the rate they pay for their license is set by the CRB based on size, commercial or noncommercial status and interactivity level. Three categories of webcasters are recognized: commercial, noncommercial and other service providers. (SoundExchange n.d.)

According to established reporting frequency, webcasters pass generated revenue to SoundExchange alongside the playlists identifying each recording played by its ISRC. What stands out, is how helpful and encouraging SoundExchange are in supporting unified reporting formats. They offer ISRC search tools, matching services, as well as tools that broadcasters can integrate into their bespoke systems. The better the reporting the more accurate are the royalty payouts. 45% of generated revenue goes to any featured artists including the lead singer, 5% go to session musicians, and 50% to the master recording rights holder, which is the record label in the majority of cases. (SoundExchange n.d.)

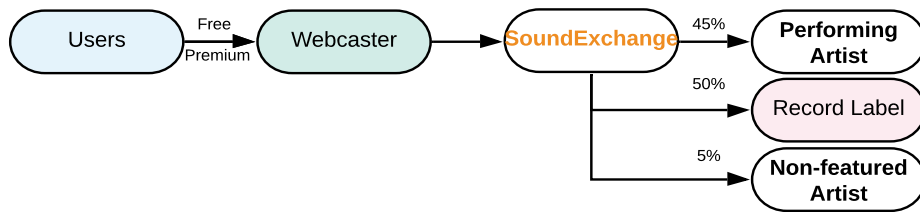


FIGURE 28. Public performance royalty split for webcasting (US) (Vasilkova, 2020)

On the composition side in the US, ASCAP, BMI and SESAC cover the public performances on the internet. However, whether there are any additional licenses or not depends on radio being a simulcast or independent radio station. An internet radio station requires a license from each of the PROs for the use of their catalogue. Mechanical license fees for such uses are included in the license royalty paid to the record label via the Harry Fox Agency.

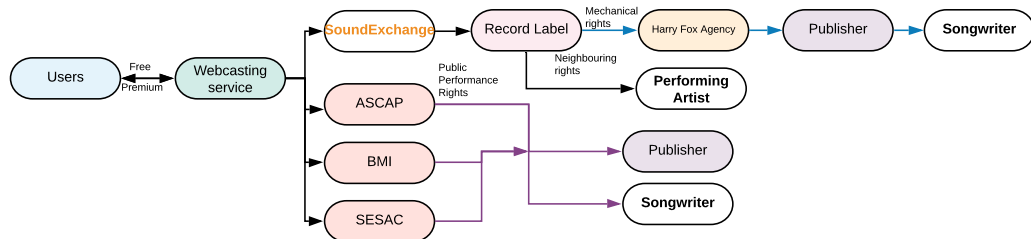


FIGURE 29. Licensing and royalty flow for not on-demand streams (US) (Vasilkova, 2020)

In the UK webcasting services require a PPL Standard Webcaster License to cover the use of a sound recording. Webcasters pay an annual administrative fee of £107, and an advance that is fully recoupable at an £0.000836 per performance. Webcasting services submit a report at the end of each quarter where they provide information enabling PPL to accurately calculate royalty, such as ISRC for each track, identities of all performers and total listening hours for the quarter.

TABLE 5: Public performance royalty calculation for webcasters (PPL Standard Webcaster Licence (Commercial) Fees & Reporting Requirements 2019.)

A	UK rate per Performance	£0.000836	
B	Average number of recorded music tracks played per hour	11	
C	Average rate per listener hour	£0.009196	A x B
D	Estimated listener hours per day	500	
E	Estimated streaming royalties per day	£4.60	C x D
F	Estimated streaming royalties per quarter	£418.60	E x 91
G	Estimated streaming royalties per year	£1,679.00	E x 265

The composition element in the UK and Europe is also handled by a CMO. PRS for Music offer a few licensing options based on webcaster's income. LOML or Limited Online Music License is needed for stations with income of £12,500 and less. Above that but below £200,000 requires a LOML+ license. Anything going over £200,000 is covered by a Music Streaming License. Only fee that broadcasters must cover is the monthly fee covering administration costs. (Spacial 2017.)

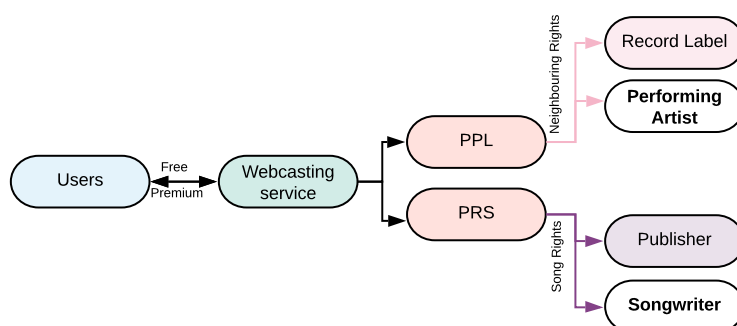


FIGURE 30. Public performance licensing for webcasting (UK) (Vasilkova 2020)

Interestingly, non-interactive streaming, on services such as Pandora or Sirius FM, does not generate mechanical royalties. Not-on-demand digital platforms only exploit the public performance right. However, digital download stores utilize reproduction copyright and not public performance (unless material can also be listened to on demand on the service). (Davis, Evans, Wunderlich, Merideth, Cvetkovski & Davis 2018.)

6 SUMMARY AND ANALYSIS

6.1 Gaps and obstacles

According to Andres Broden (Appendix 1, 2020), one of the biggest problems the music industry faces today is poor metadata. Since this has also been highlighted by Rebecca Walker (Appendix 1, 2020) as well, it is worth researching into why and how this gap appeared. Metadata is the song credits that identify artists, producer and sound engineer, songwriters, lyricist, anyone who is in any way connected with the creation of the product. Metadata also concludes ISWC and ISRC which allow for every product to have unified identity on product level. Ideally, this information would be synchronised across all databases used by record labels, publishers, CMOs, as well as services such as Spotify.

This problem starts in the same place where copyright is born: with the songwriter. Many songwriters do not register their songs correctly, which is especially true for mechanical royalties. This could be caused by the absence of guidelines for verifying the metadata and no unified database. Though, as Chris Cooke pointed out (2018, 74), the databases publishers and CMOs use have discrepancies in databases where songwriter credits for one song in publisher's database might not match with the credits on file in that of a CMO.

Case study

After comparing two databases of rights owners from ASCAP and BMI (Picture 1; Picture 2), for Ariana Grade's hit 'Side to Side', it has become apparent where the problems might occur. Firstly, looking at the two sets of songwriter information what stands out is the data available on one of the writers, Maraj Onika Tanya, where in the 'current affiliation' column it shows NA, Not Available, and NS - No Society. Whilst BMI database explains that Onika used to be a BMI member and it continues to represent the interest in the work, the information about where the performing royalty should go is absent on the ASCAP database. The only link between the song and the songwriter is the CAE/IPI numbers (Composer, Author,

Editor/ Interested Party Information) which match. These numbers are unique identifiers that link songwriters to works.

Looking at Salmanzadeh Ilya's details, they do not seem to match at all between the two catalogues. According to technical distribution improvement manager for PRS for Music, Michael Hall (2020), if an international CMO was to pay a royalty for the use of the work in their territory and the information did not match, it would affect the royalty payments and those songwriters whose IPIs match between the systems would receive the royalty value of the 6 songwriters. Alternatively, according to Hall (2020), if during re-matching of the overseas data a CMO is able to establish what society the other songwriters are members of, as in the example with Onika Tanya ASCAP would not be able to, a CMO will allocate a royalty for them and pass it on to the society identified.

Next, if we compare the publisher data, it does not seem to match at all. In the ASCAP database there is no mention of 'Songs of Universal INC' publisher which are BMI affiliates. This might be an issue when a user is trying to find out who they should be contacting for a permission to use a work that is owned by more than one publisher.

SONGWRITER/COMPOSER	CURRENT AFFILIATION	CAE/IPI #
GRANDE ARIANA	ASCAP	664244638
KOTECHA SAVAN HARISH	ASCAP	189134349
KRONLUND ALEXANDER ERIK	STIM	228550961
● MARAJ ONIKA TANYA	NA	477174720
SALMANZADEH ILYA	STIM	500841887
SANDBERG MARTIN KARL	STIM	215866753
PUBLISHERS	CURRENT AFFILIATION	CAE/IPI #
SONGS OF UNIVERSAL INC	BMI	353271280

PICTURE 1. Public performance rights split (BMI repertoire 2020)

Writers		PRO	IPI	Publishers		PRO	IPI
ASCAP controls 42.5%				ASCAP controls 42.51%			
GRANDE ARIANA		ASCAP	664244638	BMG RUBY SONGS		ASCAP	627166639
ILYA		STIM	632674247	GRANDARIMUSIC		ASCAP	681703244
KOTECHA SAVAN HARISH		ASCAP	189134349	MXM MUSIC AB		STIM	657349509
KRONLUND ALEXANDER ERIK		STIM	228550961	UNIVERSAL MUSIC CORPORATION		ASCAP	31312147
MARAJ ONIKA TANYA		NS	477174720	WARNER-CHAPPELL MUSIC SCANDINAVIA AB		STIM	259736718
MAX MARTIN		STIM	254380962	WOLF COUSINS		STIM	714077654

PICTURE 2. Public performance rights split (ASCAP repertoire 2020)

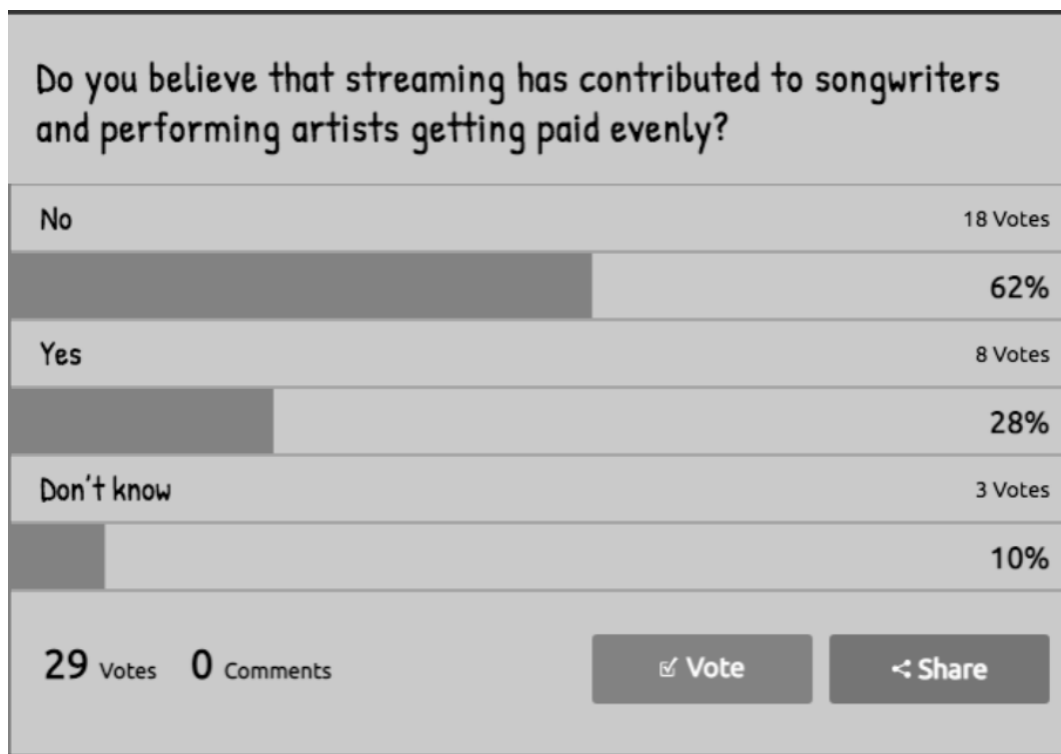
A fast-developing technology that has the potential to help tackle the problem of gaps in the metadata, is blockchain. It is a digital database where all participants have a copy of it and all copies are linked together to form a chain. Such system allows for tracking of all transactions and changes to the database. (Stokes 2019, 240-241.) Blockchain technology is believed to be a more secure way to manage data and will allow for smart licensing, that is, a database of all licensing agreements, revenue splits and avoid delayed payments caused by lack of appropriate writer data. (PWC n.d.)

Michael Hall (2020) also gave a deeper insight into what blockchain would mean to the digital rights management and royalties, especially from CMO's point of view. He shared that blockchain would have a direct impact on CMOs operations but what needs to be included is the percentage shares information for all territories and entities involved in using the blockchain technology. The challenge of implementing this technology, accordant to Michael (2020), is to get all valid shares holders in the right shape meaning ensure all information is in order. Getting authoritative information is a challenge.

6.2 Licensing and remuneration

The absence of a mechanical rights society issuing blanket licenses in the US and record labels not having all the details from publishers (Cooke 2018, 73) leads to revenue loss and causes a large gap in how the streaming market is divided. Music publishing streaming revenue share of the global market is only 38.4% compared to record labels' share of 51% (Wood 2019; Stassen 2019).

Based on an independent questionnaire (Picture 3), 18 out of 29 songwriters and artists believe that streaming has not helped resolve the issue of unfair remuneration. This proves that creators do not have much faith in the current 'pro-rata' model. Instead, the industry has long been discussing switching to a 'user-centric' royalty payment calculation and distribution system (Dredge 2019). That is, payments from individual subscriptions go towards the artists listened to by the subscriber. This model aims at supporting independent record labels and unsigned artists. Currently the top 0.4% of artists receive 9.9% of total revenue, whilst under user-centric model the same 0.4% would receive 5.6%. That makes for 4.3% increase for other artists. (Roche, Smith 2019.)



PICTURE 3. Results of independent questionnaire (Vasilkova 2020)

On the contrary, according to Michael Hall (2020), thanks to streaming royalty rates are fairer being transactional. The downside is the administering costs and its reliance on accurate data. Bargfrede (2017, 121) also confirms that absence of a unified database for rights and a central clearing house for music rights holders caused high licensing costs. High licensing and administration costs mean that streaming creates high volumes of data that must be processed. This leads to higher IT costs in terms of data storage and processing power.

7 CONCLUSIONS AND DISCUSSION

Having examined the structure of the music industry and its fragmentation in regards to licensing, I have come to several conclusions. Firstly, licensing models we have today for streaming and digital downloads are based on the old-fashioned licensing models for physical products. Record labels doing direct deals since the time of vinyl and cassette tapes, has impacted the way publishers think about licensing digital music platforms, and going from collective to direct licensing has had a great impact on rights holders.

The research has highlighted a few gaps that might prevent balanced and fair royalty compensation for artists and songwriters. Because of large market shares owned by major record companies, it is difficult for independent artists to break through. Streaming seems to enable major labels to make profit as they keep most of the revenue while artists still receive the same royalty percentage as they do from physical sales. However, with the help of aggregators independent artists can keep majority of their revenue, the share they receive is not as fair as it could be since the whole royalty is based on the total number of streams. DSPs get a lot of blame for songwriters being underpaid, but the bottom line is, it all comes down to the major record labels taking over a half of all revenue generated by a streaming service. Even if publishing sector received 40% of revenue, as opposed to current 13.3%, it will not solve the problem.

From my own experience working in the music industry and after speaking with music industry professionals, it is important to highlight the low level of understanding of the difference between composition copyright and sound recording copyright amongst independent artists and songwriters which makes it difficult to assist them in receiving due royalty. CMOs especially rely on efficient metadata for member payments and whilst blockchain could facilitate and improve accuracy, it would take the music industry coming together and taking ownership and control of own databases and reaching consensus. It would be interesting to investigate if blockchain could potentially lower licensing costs and how much global recorded music revenue will increase.

It is worth noting the changes that are yet to come. The rise in statutory royalty from 10.5% to 15.1% in 2022 is a considerable improvement in remuneration for songwriters. However, this raises a different topic for research: potential changes in publisher – songwriter agreements and how higher revenue will be split between the two. It is possible that publisher will take a higher percentage from the mechanical royalty payment to compensate for the increase, or, alternatively, could more revenue go to CMOs for public performance?

While conducting the research, I noticed that information tends to derivate from one source to another which can create a lot of confusion. The problem occurs when the law is being misinterpreted and the fact that law varies from country to country brings more mess in the structure of the industry. In hopes to ease licensing more agencies are being set up, new alliances and joint ventures for example SPVs and copyright hubs. This causes licensing and administering costs to go up and there is more chance of a delay in royalty payout.

REFERENCES

- ARESA. Anglo-American Rights European Service Agency. [Webpage]. Read on 04.04.2020. <https://www.aresa-music.com/en/>
- ASCAP Repertory. [Online Database]. Accessed on 02.05.2020. <https://www.ascap.com/repertory#ace/search/performer/grande>
- AWAL. 2019. The Ins & Outs of Signing a Record Deal. [Webpage]. Released on 07.05.2019. Read on 24.04.2020. <https://www.awal.com/blog/signing-a-record-deal-decoded>
- AWAL. How It Works. [Webpage]. Read on 29.04.2020. <https://www.awal.com/how-it-works>
- Awbi, A. 2018. IMPEL relaunches as independent collecting society. [Webpage]. Released on 02.01.2018. Read on 29.04.2020. <https://www.prsformusic.com/m-magazine/news/impel-relaunches-independent-collecting-society/>
- Bacle, A., Getz, D., Sollosi, M. (2019). 22 musicians who banned presidential candidates from using their songs. [Webpage]. Read on 08.03.2020. <https://ew.com/gallery/presidential-campaign-music/>
- Bargfrede, A. 2017. Music Law in the Digital Age. 2nd edition. Boston: Berklee Press.
- BBC. 2019. History of the CD:40 years of the compact disc. [Webpage]. Released on 12.03.2019. Read on 13.04.2020. <https://www.bbc.co.uk/news-round/47441962>
- BMI Repertoire. [Online Database]. Accessed on 02.05.2020. <http://repertoire.bmi.com/StartPage.aspx>
- Brain, M. How Recording Contracts Work. [Article]. Read on 13.10.2020. <https://entertainment.howstuffworks.com/recording-contract2.htm>
- Broden, A. Publishing Data Analyst. Spotify. 2020. Interview on 05.04.2020.
- Clair, St. Chantelle. 2018. Music Publishing Deals Available to Songwriters and Creators. [Blogpost]. Read on 19.04.2020. <https://blog.songtrust.com/music-publishing-deals-in-2018>
- Compulsory License for Making and Distributing Phonorecords. 2018. The United States Copyright Office. [Article]. Read on 04.04.2020. <https://www.copyright.gov/circs/circ73.pdf>
- Cooke, C. 2018. Dissecting The Digital Dollar. 2nd edition. Great Britain: Music Managers Forum.

Davis, M. Evans, L. Wunderlich, J. Merideth, R. Cvetkovski, J. Davis, A. 2018. What is a Mechanical License? [Article]. Released on 04.08.2018. Read on 30.04.2020. <https://exploration.io/what-is-a-mechanical-license/>.

Day, B. "Net Profit Deals": A Recent Alternative to the Traditional Record Deal. [Article]. Read on 25.04.2020. <http://blog.buko.net/legal/management-and-recording/net-profit-deals-a-recent-alternative-to-the-traditional-record-deal/>

Dredge, S. 2018. How would user-centric payouts affect the music-streaming world? [Blogpost]. Read on 17.02.2020. <https://musically.com/2018/03/02/user-centric-licensing-really-affect-streaming-payouts/>

Dredge, S. 2019. User-centric Streaming Payouts: Apple, major labels, new artists... [Blogpost]. Released on 09.05.2019. Read on 03.04.2020. <https://Musically.com/2019/05/09/user-centric-streaming-payouts-apple/>

Eggleton, G. Senior Economist. Spotify. 2020. Personal communication. Interviewer N.Vasilkova. 20.04.2020.

Emenau, M. 2014. Understanding Music Royalties Pt.2: Mechanicals, Publishing and Synch. [Webpage]. Released on 09.05.2014. Read on 12.04.2020. <http://blog.dubspot.com/music-royaltiesmechanicals-publishing-help-understand/>

European Commission. 2018. Case M.8989 - Sony/EMI Music Publishing. [Article]. Released on 26.10.2018. Read on 26.04.2020. https://ec.europa.eu/competition/mergers/cases/decisions/m8989_610_7.pdf

Future of Music Coalition. 2018. Public Performance Right for Sound Recordings. [Fact Sheet]. Read on 23.03.2020. <https://futureofmusic.org/article/fact-sheet/public-performance-right-sound-recordings>

Good, A. 2013. The Six Rights of Copyright - Part V: The Right to Public Display. [Webpage]. Released on 02.07.2013. Read on 15.04.2020. <https://goodattorneysatlaw.com/right-to-public-display/>

Gordon, S. 2015. A Simple Guide to Signing the Best Synch Deal Possible. [Blogpost]. Released on 25.05.2015. Read on 12.10.2020. <https://www.digitalmusicnews.com/2015/05/25/a-simple-guide-to-signing-the-best-sync-deal-possible/>

Gorman, R.A., Ginsburg, J.C., Reese.R.A., 2011. Copyright Cases And Materials. 8th edition. New York: Foundation Press.

Harry Fox Agency. FAQs. [Webpage]. Read on 04.04.2020. <https://www.harryfox.com/faq>

Hall, M. Technical Distribution Improvement Manager. PRS for Music. 2020. Personal communication. Interviewer N.Vasilkova. 02.05.2020.

ICE Services. Online Processing. [Webpage]. Read on 06.04.2020. <https://www.iceservices.com/services/processing/>

IFPI. 2019. IFPI Global Music Report 2019. State of The Industry. Appendix 2. Report. [Online]. Read on Available at: <https://www.ifpi.org/>

Ingham, T. 2015. Major Labels Keep 73% of Spotify Premium Payouts - Report. [Webpage]. Released on 03.02.2015. Read on 29.04.2020. <https://www.musicbusinessworldwide.com/artists-get-7-of-streaming-cash-labels-take-46/>

K-Pizza. How To Get Your Music On Spotify: Top 10 Distribution Services. [Blogpost]. Read on 12.04.2020. <https://www.productionmusic-clive.com/blogs/news/top-10-music-distribution-services-cd-baby-vs-distrokid-vs-tunecore-vs-others>

Kilhefner, J. How Much Money Is Paid to a Songwriter in Performance Royalties? [Webpage]. Read on 30.04.2020. <https://work.chron.com/much-money-paid-songwriter-performance-royalties-23011.html>

Kohn, B. 2019. Kohn On Music Licensing. 5th edition. New York: Aspen Publishers, Inc.

LeBlanc, L. 2001. Digital Rights At Stake In Canadian Contracts. Billboard, 51. [Newspaper]. Released on 21.04.2001.

Liu, K., Hilty, R.M. 2017. Remuneration of Copyright Owners. Regulatory Challenges of New Business Models. Volume 27. Berlin: Springer.

Lowe, C. 2017. Copyright & Intellectual Property Law. The Comprehensive Guide To Protection of Intellectual Property. Straightforward Publishing.

Lyons, F. Sun, H. Collopy, D. O'Hagan, P. Curran, K. 2019. Music 2025. The Music Data Dilemma: issues facing the music industry in improving data management. [Article]. Read on 26.04.2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809492/Music-2025.pdf

McCormicks Law. 2013. Record Deals: How Music Royalties Are Calculated on Record Sales. [Blogpost]. Released on 04.07.2020. Read on 13.04.2020. <https://www.mccormicks.com.au/blogs/record-deals-how-music-royalties-are-calculated-on-record-sales>

Merlin. How it works. [Webpage]. Read on 29.04.2020. <http://www.merlinnetwork.org/membership/how-it-works>

Moser, D.J., Slay, C.L. 2012. Music Copyright Law. Boston: Course Technology, Cengage Learning.

Mulligan, M. 2019. 2018 Global Label Market Share: Stream Engine. [Blogpost]. Released on 13.03.2019. Read on 29.04.2020. <https://www.mi-diaresearch.com/blog/2018-global-label-market-share-stream-engine/>.

Music Answers. 2015. Direct Licensing Comparison. [Blogpost]. Read on 29.03.2020. <http://www.musicanswers.org/collective-v-direct-licensing>.

Music Business Worldwide. 2018. Major Victory For Songwriters As US Streaming Royalty Rates Rise 44%. [Webpage]. Read on 04.04.2020. <https://www.musicbusinessworldwide.com/major-victory-songwriters-us-mechanical-rates-will-rise-44-2018/>

Music Licensing for Digital Downloads. Easy Song Licensing. [Webpage]. Read on 25.04.2020. <https://www.easysonglicensing.com/pages/help/articles/music-licensing/music-licensing-for-digital-downloads.aspx>

Music Licensing for Physical, Audio-only Products. Easy Song Licensing. [Webpage]. Read on 13.04.2020. <https://www.easysonglicensing.com/pages/help/articles/music-licensing/music-licensing-for-cds.aspx>

Online licensing. [Webpage]. Read on 28.04.2020. <https://www.ppluk.com>

Ostrow, J. 2010. Indie Vs. Major: Which Record Label Contract Is Right For you? [Webpage]. Released on 16.05.2010. Read on 24.04.2020. <http://www.musicthinktank.com/mtt-open/indie-vs-major-which-record-label-contract-is-right-for-you.html>

Output. Music Publishing Deals: Learn How to Earn. [Article]. Read on 18.04.2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809492/Music-2025.pdf

Passman, D.S. 2015. All You Need to Know About the Music Business. 9th edition. New York: Simon & Schuster.

Perez, S. 2020. Streaming services accounted for nearly 80% of all music revenue in 2019. [Webpage]. Released on 26.02.2019. Read on 27.04.2020. <https://techcrunch.com/2020/02/26/streaming-services-accounted-for-nearly-80-of-all-music-revenue-in-2019/>

PPL Standard Webcaster Licence (Commercial) Fees & Reporting Requirements. 2019. [Article]. Read on 12.04.2020. <https://www.ppluk.com/wp-content/uploads/2019/01/Standard-Webcaster-Licence-Commercial-Quick-guide-to-fees-2019.pdf>

PRS for Music. 2018. Sony/ATV and SOLAR extend pan-European digital licence administration agreement. [Webpage]. Released on 30.10.2018. Read on 05.04.2020. <https://www.prsformusic.com/press/2018/sonyatv-solar-extend-pan-european-digital-licence-administration-agreement>

PRS for Music. Commercial Music Sync Licensing. [Webpage]. Read on 10.04.2020. <https://www.prsformusic.com/licences/releasing-music-products/commercial-music-sync-licensing>

PRS for Music. MCPS mandates and exclusions. [Webpage]. Read on 04.04.2020. <https://www.prsformusic.com/what-we-do/prs-and-mcps/mcps-mandates-and-exclusions>

PRS for Music. Music Download Licence (MDL). [Webpage]. Read on 28.04.2020. <https://www.prsformusic.com/licences/using-music-online/music-download-licence>

PRS for Music. Radio royalties. [Webpage]. Read on 08.04.2020. <https://www.prsformusic.com/royalties/radio-royalties>

PRS for Music. Retail audio products. [Webpage]. Read on 25.04.2020. <https://www.prsformusic.com/licences/releasing-music-products/retail-audio-products>

PRS for Music. What we do. [Webpage]. Read on 23.02.2020. <https://www.prsformusic.com/what-we-do>

Public Domain Sherpa. Public domain sound recordings. [Webpage]. Read on 13.02.2020. publicdomainsherpa.com/public-domain-sound-recordings.html

PWC. Blockchain: Recording the music industry. [Webpage]. Read on 30.04.2020. <https://www.pwc.co.uk/industries/entertainment-media/insights/blockchain-recording-music-industry.html>

Rate Charts [Webpage]. Harry For Agency. Read on 13.04.2020. <https://www.harryfox.com>

Resnikoff, P. 2013. Spotify Royalties Explained, In 3 Easy Diagrams... [Blogpost]. Released on 04.10.2013. Read on 30.04.2020. <https://www.digitalmusicnews.com/2013/12/04/spotifythreeeasy/>

Rickard, D. Senior Operations Improvement & Optimisation Manager. PRS for Music. 2020. Interview on 20.03.2020. Interviewer Vasilkova, N.

Robley, C. 2014. Three Common Music Publishing Deals for Songwriters. [Webpage]. Released on 02.10.2014. Read on 18.04.2020. <https://diymusician.cdbaby.com/musician-tips/3-common-kinds-music-publishing-deals-songwriters/>

Roche, A. Smith, S. 2019. How Does The Money Flow From Music Streaming To Artists, Music Industry? [Webpage]. Released on 10.15.2019. Read on 30.04.2020. <https://www.hypebot.com/hypebot/2019/10/a-breakdown-of-music-streaming-monetization-flow.html>

Routley, N. 2018. Visualizing 40 Years of Music Industry Sales. [Webpage]. Released on 06.10.2018. Read on 28.04.2020. <https://www.visualcapitalist.com/music-industry-sales/>

Royalty Exchange. 2019. Mechanical Royalties Guide | 2019. [Webpage]. Released on 17.01.2019. Read on 04.04.2020. <https://www.royaltyexchange.com/blog/mechanical-royalties#sthash.Ed2aASm2.H7ckFs1T.dpbs>

Sentric Music. 2017. What Are Mechanical Royalties? [Blogpost]. Released 24.08.2017. Read on 13.04.2020. <https://sentricmusic.com/blog/2017/august/24/what-are-mechanical-royalties/>

Singleton, M. 2015. This was Sony Music's contract with Spotify. [Webpage]. Released on 19.05.2015. Read on 30.04.2020. <https://www.theverge.com/2015/5/19/8621581/sony-music-spotify-contract>

Sobel, R. Weissman, D. 2008. Music Publishing. The Roadmap to Royalties. New York: Routledge.

Soundcharts. 2020. A Hard Look at How Record Companies Make Money: Royalty Splits, Types of Record Deals, and the Label Business Model. [Blogpost]. Released on 09.02.2020. Read on 27.04.2020. <https://soundcharts.com/blog/splits-and-profits-record-deals-analysis#exhibit-c-net-profit-record-deal>

SoundExchange. About digital royalties. [Webpage]. Read on 12.04.2020. <https://www.soundexchange.com/artist-copyright-owner/digital-royalties/>

Spacial. 2017. Stream Licensing for Internet Radio Stations. [Webpage]. Read on 28.04.2020. <https://spacial.com/stream-licensing-internet-radio-stations/>

Spinnup. How do record labels work? [Webpage]. Read on 24.04.2020. <https://spinnup.com/gb/top-faqs/how-do-record-labels-work/>

Spotify Provider Directory. [Webpage]. Read on 14.04.2020. www.artists.spotify.com

Standeford, D. 2016. US Copyright Office Recommends No Change To The "Making Available" Rights. [Blogpost]. Released on 24.02.2016. Read on 30.04.2020. <https://www.ip-watch.org/2016/02/24/us-copyright-office-recommends-no-change-to-the-making-available-right/>

Stassen, M. 2019. The Global Record Industry Generated \$18.8BN Last Year - With 31% Going To Universal Music Group. [Article]. Released on 13.03.2019. Read on 30.04.2020. <https://www.musicbusinessworldwide.com/the-global-record-industry-generated-18-8bn-last-year-with-31-going-to-universal-music-group/>

Stokes, S. 2019. Digital Copyright. Law and Practice. 5th edition. Oxford: Hart Publishing.

Strong, W.S. 2014. The Copyright Book. A Practical Guide. 6th edition. Massachusetts: Massachusetts Institute of Technology.

The Music Modernization Act. The United States Copyright Office. [Webpage]. Read on 04.04.2020. <https://www.copyright.gov/music-modernization/>

Universal Music Publishing Group. 2019. Billie Eilish soundtracks new Calvin Klein ads. [Blogpost]. Released on 14.05.2019. Read on 12.10.2020. <https://www.umusicpub.com/uk/FilmAndTv/2019/Billie-Eilish-Calvin-Klein.aspx>

Voogt, B. 2019. The Indie Musician's Guide To Digital Distribution. [Webpage]. Released on 31.12.2019. Read on 25.04.2020. <https://heroic.academy/indie-musicians-guide-to-digital-distribution/>

Waczek, R. Music Royalties Explained: The Ultimate Guide for 2020. [Blogpost]. Read on 25.04.2020. <https://www.indiemusicacademy.com/blog/music-royalties-explained#royalties-from-physical-cds>

Walker, R. ICE Contract Manager. PRS for Music. 2020. Interview on 13.04.2020.

Waniata, R. 2018. The Life and Times of the Late, Great CD. [Webpage]. Released on 07.02.2020. Read on 13.04.2020. <https://www.digitaltrends.com/features/the-history-of-the-cds-rise-and-fall/>

Wood, L. 2019. Global Music Publishing Market Growth, Trends, Forecast Report 2019-2024: Digital Revenues Grew 19.1% and Accounted for 54% of Total Recorded Music Industry Revenues - ResearchAndMarkets.com [Webpage]. Released on 22.07.2019. Read on 29.04.2020. <https://www.businesswire.com/news/home/20190722005385/en/Global-Music-Publishing-Market-Growth-Trends-Forecast>

APPENDICES

Appendix 1. Expert Interview transcripts

Interviewee: Damon Rickard

Position: Senior Operations Improvement & Optimisation Manager, Operations & Royalty Distribution

Company: PRS for Music

Date: 20.03.2020

Q: What do you see as the biggest issue with the modern music business?

A: The move from album purchases to single song streams. As whilst this is great for the end consumer, the current pay models weight the money to the bigger artists and publishers even gaining money from people that don't listen to them.

For instance, if I were to pay £10 to every streaming service and listen to one song on all of them over and over again for the month, but no one else listened to it, they would see no money. I wouldn't have enough time in the day to stream it enough to make sure it hit enough streams to gain any sort of royalty more than a few pence. I could have spent £100 doing that and that song would see nothing. Because my £10 goes into a pot which is then divided by stream numbers overall. I don't see the benefit to music where my money doesn't go to the bands I listen to. So smaller bands with loyal followers that likely wouldn't (or very minimally) listen to the "big" artists aren't seeing the money that they are probably earning for streaming services.

Q: Do you think songwriters and artists & producers are paid fairly in proportion or is one sector paid disproportionately?

A: I think that previously this used to be the case but in the modern supply of music I don't feel the publisher has the same level of expense or barrier to sell that they used to that an artist or songwriter can't manage themselves. For instance, when publishing a CD, there is the print costs, the distribution costs, price

points agreements, getting agreement for stores to stock it, advertising etc. Now anyone can get their music into Spotify.

What the publishers do now is almost corner the playlists so that you need them to be found. Instead of being needed to put you in the public eye you need them so they don't stop you. So the current splits that are being maintained I do not feel are any longer justified. Publishers get as much as they used to for much lower costs and less work required.

Q: How has streaming impacted the role/functions of a collecting society?

A: I don't think it has impacted the function. It has just provided it with a new landscape of work to license, collect, process and pay. The role has changed as its dealing with data transactionally as well as the sheer volumes of it. There are more counter claims due to the multi territory aspect of it. However, the society still needs to drive as much value from it and pay out to their members. I think the impact of competing for the rights to works that this introduced has created a more competitive environment for Societies to operate in but this isn't a bad thing. As preventing a monopoly can improve service and value for the end customer.

Q: How does PRS pay royalty to its members?

A: Writers must control at least 50% of the share of any work. They start with 100% and allow the publisher a portion up to 50%. If there is no publisher then 100% to the writers but publishers may push agreements where the writer gives up some of their 50% after we've distributed. So direct payment between writer and publisher which would be considered a private agreement and outside the rights of the music. For MCPS they don't actually control the mechanical rights. They're essentially an agent for their members that do control the rights. They do have some writer members who will collect 100% of the mechanical royalties. Normally mech rights are invested to the publisher and then have a private agreement for onward payment.

Q: Why does PRS pay 100% of mechanical royalty revenue to publishers?

A: All writers control their mech rights to begin with but unless their bigger earners it's actually not financially sound to join MCPS. And often when they do hit that

point the publishing deals generally request the relinquishing off mech rights over and payments made by publisher to writer down the line.

There's no limit on % of mech rights the publisher can have. Hence why it's generally 100%.

Interviewee: Rebecca Walker

Position: ICE Contract Manager

Company: PRS for Music

Date: 13.04.2020

Q1: Do you think composers get paid fairly for radio plays?

A: Yes largely and wherever possible. There's still an issue with composers not registering with a society or not registering there works. And we still don't have perfect pay for play distribution but most societies do as much as fiscally reasonable. So small services are analogised but lots of work goes into ensuring we use representative data sets to pay as fairly as possible. Including specific policies for diversity stations which wouldn't meet processing threshold but are still processed per usage to ensure composers and works in more niche repertoires get fairly represented in distributions.

Q: How do copyright hubs make it easier to process data?

A: DSPs send a usage file per DSP per territory per tier. These files include trillions of works. ICE process it and mark our [PRS for Music] controlled works and send it back as an invoice to the DSP who check the data and barring no disputes, pay the invoice and then ICE send the data to PRS who use it to pay the members.

Interviewee: Andreas Broden

Position: Publishing Data Analyst

Company: Spotify

Date: 05.04.2020

Q: Do you think songwriters are better looked after by the music industry than performing artists?

A: This is so difficult to answer. Better looked after, by who and in what context?

A bit like apples and oranges. They each deal with different types of agreements. A songwriter is under normal circumstances a member to a PRO/Collecting Society who via licenses receives reports and collects and distributes money for the music used for that writer. A performing artist do not have any collective management organisation working like that. An artist would only make money from a specific recording via a recording contract with a record label. Or own the recording themselves.

Q: Would you say songwriters get paid fairly in proportion to recording artists?

A: These are difficult topics to discuss. I'm sure there are actual monetary figures out there that somebody knows about that I don't. I mean, debating whether or not a publishing contract is "fair", I don't know. There are no standard contracts that everyone has to follow and you're free to create your own publishing company. Has Dolly Parton who wrote "I Will Always Love You" been paid more than Whitney Houston who just recorded it? Definitely yes. And, that's because a song's life can go on forever while a specific recording of that song may not be popular at all.

Q3: what is the biggest obstacle in the music industry at the moment? Why?

Not having mandatory composition metadata together with the recordings that are submitted to digital streaming services today.

This simply creates a huge problem when it comes to matching/identifying the rightholders – which in turn leads to missing payments, inaccurate market share calculations, disputes, fraud, etc.

Q: Are publishers making it more difficult for songwriters to get a better royalty? Why?

A: Their core business is about representing songwriters and to maximize the income of those. With deals where they take 50% of revenue, isn't 50% a bit high considering they are making money on someone else's work? Also, the split between writer and publisher isn't effectively 50-50. E.g. if you have a co-publishing deal you the writer retain the writer share (50) plus half the publisher share (25) = split is 75-25. And for example, in Europe the most common standard writer-publisher split is 66,66-33,33.

Q: Would you advise songwriters to be represented via direct or collective licensing deals?

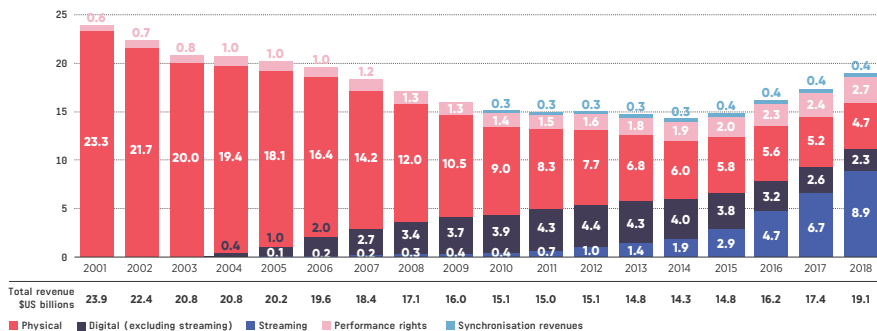
A: As a songwriter you do not in general have that choice except if it's about mechanical rights in the US. But even in the US they will soon have collective management for mechanical rights like the rest of the world. It's called the "MLC" (<https://www.copyright.gov/music-modernization/115/>) Basically everywhere else the licensing is via collective management for both performing and mechanical rights. So, if you want to have a direct deal with a streaming service you would either have to leave your membership with your collecting society, or withdraw the rights for online use. And let's say you do and negotiate yourself with the streaming service. Then it comes entirely down to whether or not that streaming service thinks it's WORTH having a license with you and your compositions. There's a huge risk the streaming service will take down those products.

Appendix 2. Extract from IFPI Global Music Report 2019

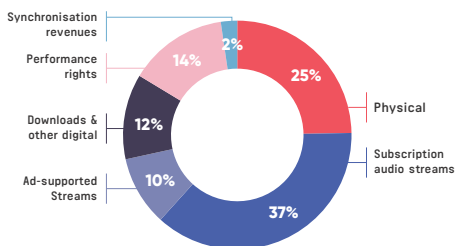
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Global Recorded Music Industry Revenues 2001–2018 (US\$ Billions)



Global Recorded Music Revenues by Segment 2018



Top Ten Music Markets 2018

01	USA	06	South Korea
02	Japan	07	China
03	UK	08	Australia
04	Germany	09	Canada
05	France	10	Brazil

↑9.7%
global recorded music market growth

58.9%
digital music share of global revenue

255m
users of paid subscription accounts



BTS photo courtesy of Big Hit Entertainment