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THE PRIVATE BRIEF · ENTERTAINMENT

Music Royalties 101: The Rights Behind Every Stream

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IN BRIEF

- ◆ Every recorded song has two copyrights: one in the song itself (the composition, owned by the writers and their publisher) and one in the recording of it (the master, owned by whoever paid for the recording, often a label or the artist).
 - ◆ Each copyright earns money through several separate streams, and each stream is collected by a different organization. Performance royalties, mechanical royalties, digital radio royalties and sync fees all flow through different doors.
 - ◆ Money goes unclaimed when an artist is not registered with the right collector, when co-writers never wrote down their splits, or when nobody is checking the statements. The fix is a short list of registrations and one piece of paper per song.
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Ask most artists where the money from a stream goes and they will describe something like a pipe: the platform pays, the money flows down, some of it reaches them. The reality is closer to a set of pipes, running in parallel, each with its own meter and its own collection agency, and money can sit in any one of them for years if nobody claims it.

This piece is the map. It is written for the artist or songwriter who wants to understand their own income, not for a lawyer, so it uses everyday words and explains the technical ones as it goes.

Two copyrights in every song

Start here, because everything else follows from it. When a song is recorded, there are two separate pieces of property.

The composition is the song itself: the melody and the lyrics, the thing you could write on a page. It belongs to the people who wrote it, the songwriters, and often to a music publisher who administers it for them.

The sound recording, usually called the master, is one particular recorded performance of that song. It belongs to whoever paid for and controls the recording. Traditionally that was a record label. Today it is often the artist, or a distributor acting on the artist's behalf.

These two can belong to completely different people. When a jazz singer records a Cole Porter song, the singer (or her label) owns the master and the Porter estate's publisher owns the composition. When you write and record your own song and release it yourself, you own both. Either way, each copyright earns money separately, through separate channels, and the two sets of money never mix.

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Where the composition earns

The song itself earns in four main ways.

Performance royalties. Every time the song is played in public, on radio, in a bar, at a concert, on a streaming service, the songwriters and publisher are owed a performance royalty. Nobody could possibly track this alone, so it is collected by performing rights organizations, or PROs. In the United States those are ASCAP, BMI, SESAC, and GMR. A songwriter joins one of them, registers each song, and the PRO collects from everyone who plays music and pays the writer their share. At ASCAP, for example, half of a performance royalty goes to the writers (the “writer’s share”) and half to the publishers (the “publisher’s share”). If you have no publisher, ASCAP says you need to set up your own publishing company with it to collect the publisher’s share.

Mechanical royalties. Whenever a copy of the song is made, a vinyl pressing, a download, a stream (which the law treats as a copy), the writers are owed a mechanical royalty. For streams and downloads in the U.S., these are collected by The Mechanical Licensing Collective, known as the MLC, a nonprofit designated by the U.S. Copyright Office under the Music Modernization Act, a law Congress passed in 2018. The MLC began licensing streaming and download services in January 2021. You have to register with the MLC and claim your songs there. It costs nothing. Money for unregistered or unmatched songs sits in a holding account, and eventually gets distributed to other publishers based on market share. If you are a songwriter and have never heard of the MLC, this is the first thing to fix.

Sync fees. When a song is used in a film, a television show, a commercial, or a video game, the producer pays a synchronization fee to the publisher for the right to pair the song with picture. This is negotiated directly, deal by deal, and it can be the most lucrative single use a song ever has.

Print. Sheet music and lyric reprints. Modest for most writers, but real.

Where the master earns

The recording earns in three main ways.

Sales and streams. When the recording is bought or streamed on an on-demand service like Spotify or Apple Music, the platform pays the master owner, meaning the label or, for independent artists, the distributor, which then pays the artist according to their agreement. This is the stream of income most artists know about, and for most it is the largest.

Digital radio. When the recording is played on non-interactive digital services, meaning internet radio, satellite radio, and streaming stations where you cannot choose the next song, a separate royalty is owed under U.S. law. It is collected by SoundExchange, and the split is fixed by statute: half to the master owner, forty-five percent directly to the featured artist, and five percent to a fund for session musicians and backing vocalists. Note the word “directly.” The featured artist’s share bypasses the label entirely and goes straight to the artist, but only if the artist has registered with SoundExchange. Many have not.

Sync, again. A film that wants to use your recording needs two licenses: one from the publisher for the composition, and one from the master owner for the recording. If you own both, you get paid twice.

Outside the United States, many countries also pay performers a share of broadcast income from the recording, sometimes called neighboring rights. Collecting it requires registering with a collection society abroad or using a service that does so for you.

The four places money gets lost

Having watched a lot of royalty statements, we find the same gaps over and over.

1. **Not registered with the right collector.** A writer with a PRO membership but no MLC registration. A featured artist with a distributor but no SoundExchange account. Each missing registration is a stream of income flowing into a holding account with your name not on it.
2. **No split sheet.** Three people write a song in an afternoon and never write down who owns what. Two years later it is placed in a commercial, and the sync fee cannot be paid because the publisher cannot get everyone to agree. A split sheet is a one-page document, signed the day the song is finished, that says who wrote what percentage. It is the single most valuable piece of paper in a working songwriter’s life.

3. **Wrong or missing metadata.** The song was uploaded with a misspelled writer name, or without the writer's identifying codes, and the money is sitting in the MLC's unmatched pile because the system cannot connect it to you.
4. **Nobody reads the statements.** Distributors and publishers make mistakes. Rates get applied wrongly, territories get missed, deductions appear that the contract does not allow. Most contracts give you the right to audit; almost nobody uses it. Even a careful read once a year catches a great deal.

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A short checklist

For every song you write or record, you should be able to answer yes to each of these:

- ◆ I am a member of a PRO and this song is registered there, with the correct splits.
- ◆ I (or my publisher) am registered with the MLC and this song is claimed there.
- ◆ If I performed on the recording, I am registered with SoundExchange as a featured artist.
- ◆ Every co-writer has signed a split sheet for this song.
- ◆ The recording is registered with the U.S. Copyright Office. For a U.S. work, registration is generally what lets you file an infringement suit at all, and registering early keeps statutory damages and attorney's fees available. It does not guarantee a recovery.
- ◆ I know who owns the master and what percentage of the income I am entitled to, in writing.

If any answer is no, that is not a crisis. It is money waiting to be claimed, and most of the registrations take an afternoon.

Where to start

Pick your most-played song. Trace every stream of income described above and see whether you are actually collecting each one. Most artists who do this exercise find at least one door they never opened.

This is general information about how music royalties work, not legal advice about your catalog or your contracts.

WRITTEN BY

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Anthony is the Managing Partner of Clemenza Law Group and serves as general counsel to a wide range of companies and philanthropic organizations. Nearly every essay here began as a real question from a real client: the contract that landed at 4 p.m., the board that meets on Thursday. He writes them the way he would answer you across the table, plainly and with care.

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The current version of this essay is kept at clemenzalaw.com/insights/music-royalties-101