

THE EXPLOITATION OF COPYRIGHT AND RELATED RIGHTS

As a writer of music, copyright law allows you to control the exploitation of your music. It is possible to either licence (rent) or assign (sell) your rights to other people who will commercially exploit your work. It is the rental or sale of your copyright that will make you money and entitle you to the payment of royalties.

Even if you are not a writer, the law gives you rights in your performance which allows you to prevent or restrict the exploitation of your performance and entitles you to fair compensation in the event that your performance is commercially exploited.

Several copyrights can exist in a single piece of music, a song or a sound recording.

If you are the writer of the music and the lyrics :



You will be the **first copyright owner** of the musical copyright work and the literary copyright work.



= first copyright owner

If your song is then recorded and a master sound recording created, a **third copyright** is created :



The copyright in the sound recording.
This is owned by the person "who made the arrangements necessary for the making of the sound recording."

Let’s look at the different **INCOME STREAMS** :

WRITING MUSIC AND LYRICS



You can make money when **your original music and / or lyrics are recorded, broadcast or performed.**

Collection societies such as the **PRS** and **MCPS** collect royalties on your behalf arising from the performance and recording of your music and lyrics.

Music publishers are businesses that seek to create revenue streams from your music and / or lyrics.

CREATING SOUND RECORDINGS



If you are signed to a **record label**, the label will probably own the copyright in the sound recording. You will get paid a **royalty** for every record you sell.

You could create MP3 files and ‘ **licence**’ your recordings to a digital download site, who will sell it on your behalf.

You can also licence your recordings to other **labels** who may for example use them on compilation albums.

It is those rights in the sound recordings which are exploited to make money.

PERFORMING MUSIC



As an artist, you do have rights in your performance – this is not ‘copyright’ it’s a separate performance right.

You can receive royalties for your performance through organisations such as PAMRA, AURA and PPL.

EXPLOITING YOUR MUSICAL AND LITERARY WORK

As a **SONGWRITER** you will be entitled to receive royalties from the exploitation of the musical work. These sources of **INCOME** are:



- 1 royalties from the publication and sale of sheet music
- 2 royalties from the exploitation of the synchronisation rights (see P61)
- 3 mechanical royalties which are payable in respect of the manufacture of records (see MCPS)

and

- 4 royalties payable for the public performance of the musical work (see PRS)

A songwriter / composer will normally sign a publishing deal with a music publishing company. It will be the publisher's responsibility to ensure all the songwriter's royalties are collected for the exploitation of songs covered by the publishing deal. PRS writer members receive a minimum of 50% of their performance income direct.

THE COLLECTION SOCIETIES

The two collection societies in the UK that deal with the collection of royalties for the musical work (as opposed to the sound recording) are

the **Mechanical Copyright Protection Society (MCPS)**

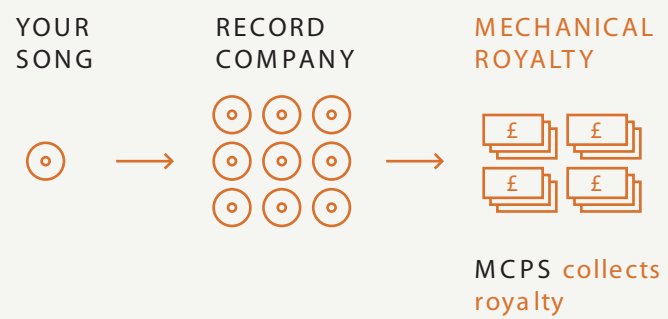
and

the **Performing Right Society (PRS)**.

Both societies are based in London.

MCPS AND THE MECHANICAL ROYALTY

Every time copies are made of your work, a royalty is payable. So for example every time a record company makes another CD of your song, a royalty is payable.



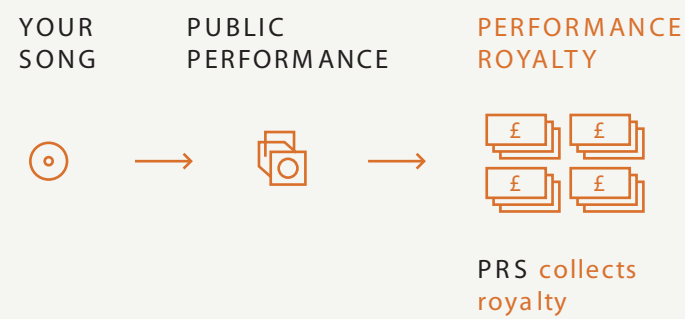
Record companies have to supply details of all the recordings they manufacture and pay royalties quarterly to the MCPS. This royalty is known as the "MECHANICAL ROYALTY".

The MCPS presently collect a statutory rate of 8.5 % of dealer price in the UK from record companies for the sales of records and 12% of gross on downloads (currently reduced to 8%, but watch out for changes). It is the role of the MCPS to collect these mechanical royalties on behalf of composers and publishers.

The MCPS collects mechanical royalties in respect of recordings manufactured in the UK. They can also collect worldwide royalties through their various affiliates around the world such as GEMA (in Germany) and the Harry Fox Agency (in the USA).

PRS AND THE PERFORMANCE ROYALTY

The PRS also collects royalties from exploitation of the musical work but PRS is only concerned with the public performance of the musical work rather than the copying of the musical work.



The royalties that PRS collect are known as "PERFORMANCE ROYALTIES". Performance royalties are paid every time the musical work is performed in public or broadcast. So for example, all of the radio stations and television broadcasters are obliged to pay royalties for the use of any musical works that they broadcast. These royalties are paid to the composer and publisher via the PRS.

In the case of radio stations and television broadcasters they are obliged to provide the PRS with what are known as "cue sheets" which set out all of the details of the music that has been broadcast and royalties are paid on the specific works. By using the cue-sheets the PRS can work out if music has been used and which writers are entitled to the income received.

In addition, the PRS issues licences to venues which play or broadcast music. So for example restaurants, shops and night-clubs that play music will be committing an offence if they do not obtain a PRS licence. The income from blanket licences cannot be allocated to a specific artist because cue sheets are not provided.

The PRS collects and distributes many millions of pounds of income on behalf of its 40,000 members. The PRS and MCPS have formed an operational alliance in the interests of efficiency. Joining fees are currently £100 for PRS and £50 for MCPS.

MCPS will collect the mechanical royalty and distribute the money to the writer via the publisher (or directly to the writer if their works are not published).

PRS will collect the performance royalty and then pay 50% direct to the writer and 50% to the publisher. If a work is unpublished, the writer will receive 100%

Royalties from synchronisation (i.e. the right to use the music in conjunction with pictures or images (e.g.) in films, videos, commercials) and from the publication and sale of sheet music are negotiated and collected directly by the music publisher.

NOTE
There is a difference between the royalty from PRS for a performance of a work and the royalty from PPL for a performer (see P63)

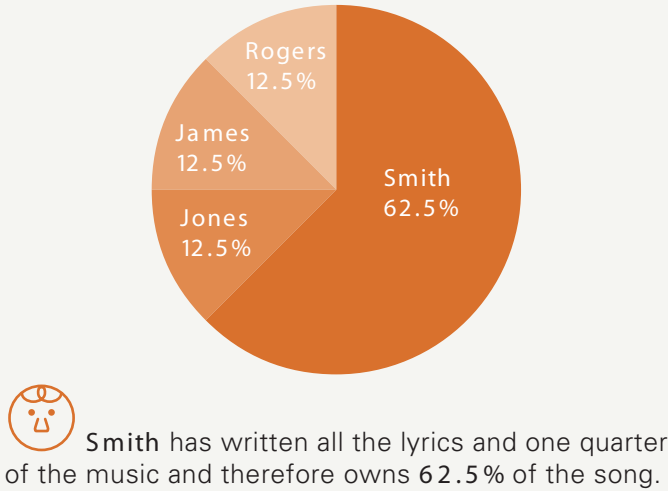
SONGWRITING SPLITS – who gets what share?

If you have co-written a song with someone else, then the royalties will be divided according to your share of that song. The recognised share from writing a song is usually divided into two, allowing 50% for the music and 50% for the lyrics. Writers should agree and divide the shares prior to embarking on a career for the obvious reasons that fame may happen and court cases may follow!

example
A song has been written by four members, as follows:



The shares would usually be allocated in this way, unless the band has made an agreement to the contrary:



PPL AND EXPLOITATION OF THE SOUND RECORDING

As the owner of the copyright in the sound recording, the record company will be entitled to royalties from the exploitation of the sound recording.

These potential income streams are:

- 1 synchronisation rights
- 2 licences for the use of samples and compilation albums
- 3 public performance fees

The record company itself will negotiate in respect of synchronisation and licences. In respect of the collection of public performance fees, **PHONOGRAPHIC PERFORMANCE Limited (PPL)** collect this income on behalf of the record companies.

PPL was set up by the record companies to control the broadcasting and public use of sound recordings. Each record company that is a member assigns it's copyrights in their catalogues of sound recordings to PPL. PPL then issues licences authorising the public performance of the sound recordings in the same way as PRS licences the public performance of music. Its sister operation the **VPL** (video performance ltd) collects the same for videos broadcast.

LICENCES AND MONEY FROM THE PRS / MCPS / PPL

To perform a work in public, PRS permission or a licence is required. (Look for the PRS sticker on the doors of pubs where live music is played)

To record or cover a work or use a sample of a recording, MCPS permission or licence is required.

To play a sound recording in public two permissions or licences are required :

one from the PRS for the performance of the music

and

one from the PPL for the use of the recording of the work. (For instance in clubs)

RECORD ROYALTIES

Even if you are not a songwriter in a band, as a recording artist, you will contractually be entitled to receive record royalties from the record company as a fee for allowing the record company to record and exploit your performance.

The Artist will usually sign a recording contract with a record company and will produce recordings exclusively for that company. The master sound recordings will belong to the company but the artist and the record company will both benefit financially from the sales of records / CD's of the recording. Within the recording contract, the record company will agree to pay the artist a record royalty in respect of each record sold.

ROYALTY SHARES

The share of royalty income generated by writers was traditionally divided into 'A' and 'B' sides on a vinyl record. With CD's and downloads, the royalties might be divided 'Pro-Rata' between the amount of tracks contained on that release.

For example a CD single may contain four tracks. The writer(s) of each song would each receive 1/4 of the total publishing income.

In the case of a compilation album, the writers would have a royalty shared between the various writers with tracks on that album.

See Chapter 5 in this workbook for more on royalty rates and earnings.

OTHER INCOME FROM PERFORMANCE (PPL, AURA, PAMRA)

A performer can now be entitled to income for the public exploitation of his performance. For example, if your performance is broadcast on television or radio or in a public place, a royalty is now payable to the performer. Previously, it was only the copyright owner that was entitled to payment for the public performance of the copyright work, now this has been extended to the public performance of the performance right.

Performance rights are particularly important to session musicians who are unlikely to have any copyright in the music they perform. A session musician actually has rights in his / her performance.

Although a session contract may buy out the musician's right to object to the exploitation of their performance without his / her consent, session musicians will be able to sign up directly with the PPL and collect income from the exploitation of their performance on the recording.

PPL collect a usage fee from the user (licence) for the public performance of the sound recording. PPL represent the copyright owners (the record company). The performers including the session musician have no right against the user. Following recent changes in EU law the performers have a right to equitable remuneration from the copyright owners (represented by PPL).

The performer (including session musician) can make a claim directly from PPL, or join a performer organisation. The performer organisations at present are AURA and PAMRA, both charging a percentage fee against the moneys they collect, they lobby PPL and their international equivalents on behalf of the performers. There are also agents who will administer performers collections but they tend to charge a higher fee and are likely only to work with featured as opposed to session musicians.