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# Publishing Agreements – Part II

## business

The views and opinions expressed in this article are not meant to substitute for legal advice which should be sought in each particular instance.

### Introduction

In the last issue of *Canadian Musician* we briefly reviewed the four main sources of publishing income: 1) Mechanical Royalties; 2) Performance Royalties; 3) Synchronisation Licenses; and, 4) Print and Other Income. In this article we will examine how this income is split up amongst songwriters and publishers under a typical music publishing agreement with a major Canadian music publisher (i.e. Universal, EMI, Warner/Chappell, Sony/ATV, BMG, herein referred to as “CMP’s”).

### Term/Scope

A songwriter may sign with a CMP for a single song, a period of time, for a whole catalogue of songs; or, an agreement could be coterminous with the term of a recording contract (where the songwriter is also a recording artist).

When a songwriter/recording artist signs with a CMP their agreement may be coterminous with a recording agreement which means the publishing agreement piggybacks the recording agreement; however, a recording agreement may be for six to eight albums and standard publishing agreement will only be for two to four albums. Your agreement should clarify if *all*

songs written during this period come under the publishing agreement or if *only* those songs which make it onto your albums should be included.

A songwriter/*non*-recording artist may enter into a publishing agreement for a period of time; for example: three periods of two years each (six years total). During this period the writer will be required to deliver a certain number of songs per year (i.e. 8-12) and normally a certain number of these songs must be included on “Major Record Company” recordings (i.e. 2-4 per year).

### Advances

Songwriters are normally paid some form of advance against future songwriting royalties when they enter into a publishing agreement with a CMP. These advances can range dramatically depending on the bargaining power of the parties.

Publishers may enter into development agreements where the songwriter/artist is paid a minimal advance upfront (i.e. \$15,000); along with a development fund to produce demos, buy a van or produce an EPK (i.e. \$20,000); and, finally if the artist secures a major recording contract they may be advanced further amounts when their album is released in Canada (i.e. \$20,000) and the US (i.e. \$75,000).

Straight songwriter agreements may pay songwriters an upfront advance (i.e. \$25,000-\$75,000) along with further advances when the songwriter meets performance targets.

### Royalties

Royalties for income streams discussed in Part I of this article under a co-publishing agreement are typically divided 75/25 with the writer retaining a 75% share of the songwriting income for mechanical and performance royalty income. Synchronisation income is typically divided more favourably for the publisher on a 65/35 or 60/40 basis due to the argument that publishers exert more effort towards securing these opportunities.

Foreign income is typically divided differently than domestic income. Most CMP’s reduce the amount of income you receive from the UK for example by applying a foreign administration fee “off the top” of money earned in the UK; thereby reducing the amount of money that ends up in the songwriter’s pocket. You and your advisors must be very focused on the provisions that reduce your income in the manner and reduce the negative impact as much as possible.

Clearly, as a songwriter, you want to structure the royalty percentages as much as possible in your favour. The numbers alluded to above are not set in stone. You would be amazed where they can get to if you (or your legal counsel) push.

### Reversion – Performance Obligations

Most CMP’s will attempt to own the rights to your songs delivered during the term of the agreement for “the life of copyright” which is the life of the author plus 50 years. Many times they are successful in retaining the copyright for this length of time; other times songwriters can negotiate a reversion (or return) of the songs they have delivered after a period of time after the termination of the agreement (i.e. 7-15 years).

Some publishing agreements will clearly stipulate that such a reversion will only occur when the songwriter is in a recouped position under their agreement.

You should also focus on songs which are delivered during the term of the agreement but which are *never* exploited by the publisher. For example, if you have delivered a handful of songs which have never earned you any income during your publishing agreement you may be able to negotiate an early reversion of those particular songs.

### Rights to Alter Songs

What happens when another artist wants to record a version of your song but wants to alter the lyrics slightly? What about when Burger King wants to put your song in a commercial? What about a foreign artist who wants to re-record your entire song in Japanese?

Your right to restrict the publisher from authorising any of the uses described above will be determined by your bargaining power and your absolute desire to control this aspect of your songs. Songwriters vary on their needs in this regard.

### Conclusion

In the past two issues of *Canadian Musician* we have walked through some of the “ins and outs” of music publishing agreements. I hope this review has been provided a starting point for any reader curious about this topic. For a more detailed review I highly recommend Paul Sanderson’s, “*Musicians and the Law in Canada*” (3<sup>rd</sup> Ed.) which is an excellent overview of this complex topic.

*Chris Taylor is a lawyer with the law firm of Sanderson Taylor where he represents Nelly Furtado, Sum 41 and David Usher amongst others. Find him on the Web at [www.sandersontaylor.com](http://www.sandersontaylor.com).*



by Chris Taylor, B.A., LL.B.