

Working with co-writers

Most songwriters start out writing on their own; but few stay solitary forever.

Check the songs on any of the charts at any given time and chances are you'll find that a large majority are the result of a collaboration between co-writers.

Songwriters like to work with other songwriters for many reasons: it brings something new out in their work, other writers complement their own skill set, it challenges them to break free of their boundaries and try new things. There's a synergy in working together that can't be denied ... and the results can be chart-topping.

But like any good relationship, songwriting collaborations work best when there's mutual trust and respect. And that means spelling out the ground rules early, so that everyone knows where they stand and how they will handle decisions about the results of their collaboration.

First things first: agree on co-writing terms

SO ... before you strike that first note or write that first word, have an open and honest discussion with your co-writers about the fact that you may be creating something here that you will all have a stake in. Agree on answers to the following basic questions.

Protect your ownership claim -

Keep a work diary – document important dates, meetings, agreements, events. Confirm decisions in writing.

Save demos of your songs, give your publisher a copy along with details on the agreed writer shares.

- Who will own copyright in the co-written work and in what proportions?
- How will income from the co-written work be shared between you?
- How will you deal with other parties: arrangers, producers, translators and additional writers?
- What will happen if someone leaves the band or if the band breaks up?

Write down the answers.

An oral contract is enforceable in Australia – however things will be much clearer (and much more pleasant) if you get it in writing. Get everyone to sign the agreement and make sure everyone has a copy. Agreeing on these details before you start will help prevent misunderstandings and disputes (and preserve friendships) later on.

Let's now look at some possible answers to these co-writing questions.

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Who owns copyright in the co-written work?

Under the Australian Copyright Act, the first owner of copyright in a musical work is the composer and the first owner of copyright in lyrics is the lyricist.

If two people collaborate on a song and one person does the lyrics and the other person does the music, it's quite clear cut: the person who did the lyrics owns the copyright in the lyrics and the person who did the music owns the copyright in the music. The two parts are combined but can also exist on their own. In this case, you can generally do whatever you like with the part you own, unless you come to an agreement otherwise with your co-writers. A work created in this way is called a "collective work".

But what if a number of people write a song together? And what if they do this by accident rather than on purpose ... you know, you're jamming with a few friends, one thing leads to another and before you know it, a new song is born. What if it's hard to separate the bit you contributed to a song from the parts created by each other person in the group? This often happens when band members work together to write the music and lyrics for a song.

In this case, the law often considers the result to be a "joint work" and the people involved become co-owners of the copyright in the music or lyrics or both. This means that none of them can deal with the song without permission from the others.

How will income be shared between co-owners?

If there's no written agreement, the law generally assumes that ownership is split equally – so 50/50 between two writers, in thirds between three writers and so on. This is the easy and simple approach, especially where the work load is similar.

It's important that there is only one APRA registration because if there's a dispute about ownership, APRA will not pay royalties to anybody until the dispute between the writers is resolved.

Of course, you can agree to whatever split you like. Just make sure that you make that split very clear when you register the work with APRA. Often the APRA registration is the only written indication of the ownership split. APRA will split any performing right royalties according to the proportions set out when the work is first registered with APRA, until all the owners tell us otherwise.

Remember, a co-written work only needs to be registered once with APRA – so ensure all the collaborators are clear on who is going to register the work and on the agreed ownership proportions that the registration will specify.

You can change the proportion down the track (with the agreement of your collaborators) – just remember to let your publisher and APRA know of any changes so that they can adjust their records and pay you appropriately.

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Using Samples

If your work has involved the use of samples remember you can't use samples without a licence. You'll need to contact the original copyright owner / publisher of the work and the owner of the sound recording you're using.

APRA has a research facility that can help you identify these owners and obtain contact details for them.

Dealing with other parties: additional writers, translators, arrangers

As the original creator of a piece of music, you and your co-writers have the exclusive right to make arrangements or translations of your musical work.

If you do appoint an arranger, translator or a producer, try to negotiate a one-off fee for their services, if possible. If that's not possible, you might offer a share in the resulting arrangement, translation or production. Get this in writing, and make sure the written agreement states clearly that the share is in the arrangement/translation/production and NOT in the original work.

Whatever you do: don't give away shares in the original work!

And remember: your share of ownership in a musical work cannot be reduced without your consent.

What happens if band members leave or the band breaks up?

Even if the band breaks up, all the former members will remain co-owners of the songs that were created together. Hopefully, the written agreements you came up with at the start will help to keep relationships civil.

To avoid conflicts, you need to agree up front on what will happen to copies of tapes, documents, masters etc if the band breaks up. Who will hold these? Will you make several copies?

Generally, anyone can perform a song written by an APRA member as long as the venue in which the performance takes place holds a valid APRA licence. That means, usually, ex-band members/co-writers can still perform the song.

Former band members can also record cover versions of the co-written songs, provided they get the relevant AMCOS licence or comply with the Copyright Act.

Once you've agreed on terms, and written them out, relax. Now you're free to get on with what really brought you together in the first place: making music.

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