

PUBLISHING FACT SHEET FOR MUSIC PUBLISHERS WISHING TO JOIN APRA|AMCOS

THE ROLE OF A PUBLISHER:

The purpose of entering into a publishing agreement with a writer is to exploit their songs for maximum income, without them having to do this themselves. The writer assigns the copyright in their musical works to the publisher so the publisher can try to generate as much licensing income for the works as possible, through use in television programmes or advertisements, having other artists record and perform the works, getting them onto compilation CD/DVDs, and so forth. A publisher can also help the writer get a record or management deal, help fund the demos, and give an advance on the writer's royalties in order to support them while they write their music. As a publisher, you will do this for the writer in exchange for a percentage of the royalties you receive on their behalf.

Depending on the agreement you have with your writer, they may be expected to deliver a number of works during the term of their agreement; the number would be determined in the contract e.g. three albums worth. It is then up to the publisher, with writer's help, to get as much exposure for the music as possible while also protecting the writer and their works from any unauthorised or undesired usage. As a publisher, you must actively work to exploit the writer's catalogue and a standard contract will have clauses to ensure this happens.

THE DIFFERENT RIGHT TYPES

The writer controls the following rights relating to different kinds of exploitation of their works, and their agreement will usually require you, as the publisher, to pay them a percentage of the royalties (licensing fees) you receive on behalf of your writers, for each of these rights;

- **Performance and Communication to the public:** This refers to the public performance or communication of music e.g. on radio, television, in pubs and clubs or live in concert. APRA is responsible for licensing of the rights of performance and communication to the public in Australia and New Zealand, so publishing contracts signed by APRA member writers should state that the writer's assignment of rights to the publisher is subject to their assignment to APRA.
- **Mechanical (or Reproduction):** Any time a work is reproduced for sale, e.g. on CD, DVD, Digital Downloads or ringtones, a mechanical licence fee must be paid. AMCOS is responsible for licensing of certain types of reproduction (as selected by its members) in Australia and New Zealand.
- **Print:** This refers to sales of sheet music of works.
- **Synchronisation:** To reproduce music in a film or television show (i.e. synchronise music with a visual image), the film/TV production company needs to obtain a synchronisation licence.
- One of the main reasons a writer assigns their works to a music publisher is so the publisher can promote their music to film/TV production companies in order to generate "synch" royalties.
- **Covers:** This refers to when an artist, other than your writer, records and releases one of your writer's works.
- **Sundry:** This refers to the all other 'miscellaneous' uses of your writer's works that do not fall into any of the major categories. For example, this can include the printing of lyrics on a t-shirt.

THE DIFFERENT TYPES OF PUBLISHING AGREEMENTS

General Works: This is the most common type of agreement and refers to the writer's entire catalogue, excluding any works that are already subject to any other specific agreements.

Specific works: As the name suggests, this agreement is more specific in terms of the works that are assigned to the publisher. Depending on what is agreed to in the contract, this could be anything from a one song (single song assignment) or a one album agreement. If the writer is in multiple bands, they may also only get a specific agreement for the songs written for one band, but all of their other songs will remain unpublished. These agreements can be tailored to any arrangements that you and the writer agree on.

Works for hire: This is a type of specific works agreement and is mainly for TV/film and jingle writers. Long ago publishers or production houses would keep a song writer on staff to write works for any future productions. As that is no longer the



norm, a “works for hire” agreement is now made. In this agreement the writer is signed to a deal for a certain term, e.g. five years and will be paid periodic advances throughout the term, and in return the writer will deliver a minimum number of works.

DEFINITIONS

Term of agreement - this refers to length or duration of the agreement and how long the publisher has control of the writer’s works. Whether it is for “Life of Copyright”, or a number of years, the agreement should have the term listed. Many agreements state that the term is for an initial duration, but automatically extends from year to year until terminated in writing by either party (subject to recoupment of advances).

Retentions - Once an agreement has been ‘terminated’, the publisher may still retain copyright in the works for a certain period. This is usually when advances have not yet been recouped, or the contract states the publisher retains the works for a set period after the termination, or it was in the original contract that the works delivered during the term were to be retained for the life of copyright but the publisher no longer acquires any new works by the writer following termination.

Advance - A publisher will usually pay a sum of money to a writer when they are first signed. This is to help with expenses while the writer is composing works. The advance is viewed as a type of loan, and is expected to be recouped by the publisher. It is a pre-payment of the writer’s royalties.

Recoupment - the ‘advance’ is expected to be paid back through recoupment of the royalties earned by the published works. However, other expenditure on the writer may also be viewed as recoupable, and this should be agreed to by both parties and not just added to the writer’s royalty account without their knowledge. As works earn royalties, the publisher will keep all royalties they receive, or a percentage of these, until the sum of the advance/agreed expenditure has been paid back. Once the publisher has recouped advances paid to the writer, they will then pay the writer the shares of royalties originally agreed to in the contract. If the songs do not generate any money, the advance and expenditure is never recouped.

Schedule - This is a list of works that are subject to the publishing agreement, usually at the back of the contract. For general works agreements, it is understood that the schedule only lists those works assigned at the commencement of the agreement, and it is the writer’s responsibility to advise the publisher of additional works they write during the term of the agreement so that the publisher can register these works with APRA|AMCOS and begin to promote and license them.

Territory - This refers to the regions of the world in which the publisher acquires the copyright in the writer’s works. Most publishers will try to sign a writer to an agreement for the World/Universe, but others may only sign a writer for individual countries or territories.

HOW PUBLISHING IS ADMINISTERED BY APRA|AMCOS

Agreements with publisher members of APRA:

If a writer signs a publishing agreement with an APRA member, for example yourself if you are elected to membership, then your company would register the agreement with APRA|AMCOS, and we would credit you as publisher on our ownership records for the appropriate works, so you receive a share of the works’ royalties (usually 50% of performing right royalties and 100% of mechanical right royalties). The percentages that you collect from APRA and AMCOS are not to be confused with the percentages for each right type that the agreement requires you to on-pay to the writer out of royalties you receive.

If a writer signs a general works agreement with you, they need to notify you of any new works they write during the term of their agreement, so you can register them with APRA.

Note: In music business terminology, works are only “published” if a writer has assigned them to a music publisher in a publishing agreement/contract. Releasing songs on CD or DVD does not mean that they are “published”.

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