

Song writing, Copyright Administration and Music Publishing in the Church.

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Music Copyright

When a song is written, there are certain rights that are connected to the song and are by default, owned by the writer/s of the song. Such rights are:

Exclusive rights

- the right to reproduce the song in any format – CD, cassette, DVD, Video, digital etc.
- the right to print the song, including music and lyrics
- the right to perform the song in a public place
- the right to broadcast the song (including TV, radio and the internet)
- the right to make an adaptation of the song – arrangement, translation, etc.

Moral rights

- the right to be attributed or credited as the author
- the right to prevent uses or modification of their song that would be prejudicial to the writer's reputation

The writer can choose to retain the responsibility of these rights and administer them themselves, or engage the services of a publisher or administrator to do this for them.

Recording a CD

If the writer chooses to administer their rights themselves, the writer can grant permission to another individual or organisation, such as a church to record the song. All that is required is a Mechanical Licence, or a letter from the writer stating that they give permission for the song to be recorded by the church, and that there is an agreement of the following points:

- how many units are to be produced,
- what price the CD will be sold for,
- other formats to be manufactured, i.e. DVD, sheet music, digital delivery
- what royalty rate is to be paid to the song,
- how many other songs are on the recording
- plus any other terms and conditions applicable to the particular relationship.

With this type of set up the only obligation a church has, is to pay the writer their royalties according to the sale of all formats, and there is a simple formula that is statutory for the calculation of royalties of this type, depending on what country you're in. The church holds no responsibilities for the songs outside of this particular recording. So if another church wishes to record it, or it is sung in other churches, it is the writer's responsibility to follow this up and chase up royalties.

However, the writer can choose to allow the church to take on the administration of the song, therefore giving the church the ability to record the song without establishing this licence, as the right to record would be held by the church.

This is what music publishers do.

Music Publishing

The role of a music publisher is to:

- Publish sheet music or licence others to publish it
- Seek opportunities for the songs to be recorded, published and used by others, including record companies, artist, film and television
- Collect fees and royalties earned for the commissioning or exploitation of music.
- Promote the reputation of their writers.
- Protect the works from unauthorised use.
- Take responsibility for all related administration, i.e.: registration of copyright (US only), registration of works with collection societies, maintaining and protection of copyrights.

It is at this point that the church needs to consider if they wish to play a deeper role in the songs being released on church recording projects. The benefits of establishing a publishing division is that it gives the church the ability to control where the song is and isn't used, knowing that the songs released by the church do carry the reputation and spirit of the church, as well as the writer, and this is something that does need to be protected.

If this is indeed what the church wishes to do, then I would suggest that a formal publishing agreement be drawn up, with the involvement of an entertainment industry lawyer. This is what Hillsong Publishing has done. We chose many years ago to take on the responsibility of administering the rights of our writers and commit ourselves to using our best efforts to increase the awareness and usage of their songs worldwide.

The basic steps to setting a publishing division are as follows:

1. *Establish a trading name or a catalogue name* that your songs will be registered under. It is this name that will be shown in all publications and recordings of the songs. Along with this you will need to take care to fulfil all legal requirements according to local corporate laws in your country. Please seek professional advice on this.

2. *Draft agreements* between writers and the church. This should be done in full negotiation and consultation with the writers. It is important that your writers understand your purpose for setting up a publishing division, and become aware of future plans for it. Carefully consider what financial terms you will put into your publishing agreements. Once again, it is highly recommended that you seek professional advice in this area.

Things to consider and seek advice on, when drafting your publishing agreement.

Royalties splits on usage types

How will you be dividing the income received from the song? It is standard for a publishing company or administrator to retain a percentage of any income received. It is important that you, the church, be able to justify the percentage of royalties being retained, in conjunction with the level of service and support you are providing your writers.

You can either negotiate a blanket split for all types of usages and income, or have a unique split for each. That being print, mechanical (recordings), synchronisation (film/TV), CCLI, live performance and others.

Advances

Some publishing agreements incorporate a financial advance; however I rarely see this in the church environment. An advance is really a loan held against the potential earning of the song or songs.

Term of contract

The length of the contract. This can vary from 1 year, which is pretty rare, to life of copyright, which is until 70 years after the death of the writer. Again, seek advice on this, and consider the implications to both parties.

Ownership

When it comes to ownership, there are two types of publishing contracts; **Assignment** deals and **Licensing** deals.

An assignment agreement is where the writer “assigns” their rights to the publisher for the term of the agreement. In this agreement the ownership of the copyrights would rest with the publisher, and not the writer. A Licensing deal is where the owner retain ownership but "licences" a publisher to control those rights for the term of the agreement.

The main difference with the two agreements is that a publishing company can not sell a writer's song or catalogue to another publishing company under the terms of a Licensing Agreement, they can only licence others to use the song, not sell them outright. Once again, it is extremely important that you draft your publishing agreement with the advice of a music industry attorney.

Unspecified usage

Consider any potential uses and income type for the song that are not mentioned or even invented at the time of drafting your agreement and the relevant income splits. For example, many publishing agreement signed over 10 years ago have no mention of digital delivery and the internet, and therefore did not negotiate income split for these sources.

Exploitation commitment

What commitment to the writer is the church able to make regarding the promotion and exploitation of their songs. This is one area that is often over-committed and misrepresented. A publishing contract should have a statement regarding the level of promotion the publishing can commit to.

Royalty payments

Clearly define when royalties will be paid and how they will be transferred to the writer. Most publishing royalties are calculated on either a quarterly or semi-annually basis and are generally paid 60 days after the end of the income period allowing for processing time.

Songs

What songs are linked to the publishing agreement? Is your publishing agreement for a choice number of songs, i.e. a Single Song agreement, or for everything the writer has written and will write during the term of the agreement. This all come back to what the church, or publisher can commit to.

Termination

How and when can either party terminate or be released form this agreement? How easy or difficult do you want this to be for your writers? This need to be seriously consider as well.

Territory

What geographical area is your publishing agreement limited to? Some agreements are for the world, some a limited to the country of origin.

3. Register your publishing name with industry organisations, such as: (CCLI - Christian Copyright Licensing International), your local Performance Rights Organisations (such as ASCPA, BMI for the US or APRA for Australia). These organisations are called collection societies or agencies because they assist music publishers in the licensing of rights and collection of associated royalties for these rights.

Collection Societies

A Collection Society or Agency specifies a particular right or group of rights within a copyright, and licences a particular market on behalf of the copyright holders, whether that is the writer or the representing publisher or publishers.

Performance Rights Organisations (PRO)

PRO's are just as they're titled, they represent the "performance right" in a song on behalf of songwriters and publishers, and this also includes the right to broadcast. They provide licences to all areas of society that use performed music (both live and pre-recorded), that is, radio, television, live music venues, internet sites and businesses. They do this by entering into an agreement with both writers and publishers alike allowing the PRO's to represent, on an exclusive basis, the relevant rights of the songs.

Here are a just a few of the Pros' around the world.

APRA – Australasian Performing Rights Association (Australia)

www.apra.com.au

ASCAP – The American Society of Composers, Authors and Publishers (USA)

www.ascap.com

BMI - Broadcast Music Inc (USA)

www.bmi.com

SESAC (Society of European Songwriters, Artists and Composers)

www.sesac.com

PRS - The Performing Right Society Ltd (UK)

www.prs.co.uk

SOCAN - Society of Composers, Authors and Music Publishers of Canada

www.socan.ca

Mechanical Rights Organisations

There are also organisations that license and collect specifically the mechanical right on behalf of copyright owners. The Mechanical right is the right to reproduce the song in a CD, Cassette and/or DVD. A lot of the Pros' around the world do also license mechanical reproduction, but there are stand alone companies that only licence mechanical rights, such as:

American Mechanical Rights Agency, Inc. (USA)

www.amermechrights.com

The Harry Fox Agency, Inc (USA)

www.harryfox.com

AMCOS – Australasian Mechanical Copyright Owners Society (Australia)

www.amcos.com.au

Mechanical Copyright Protection Society (UK)

www.mcps.co.uk

Church Licensing Organisations

These organisations licence the church for the reproduction of songs specifically for church use. The main player in this area of licensing is:

CCLI - Christian Copyright Licensing International

www.ccli.com

4. *Set up your licensing documents.* As the administrator of songs, you will have people approach you to use your songs in different ways. The process of granting this permission is known as licensing, and there are several different types of licensing in music publishing. The main types of licences are:

Mechanical Licences:

An agreement covering all of the particulars of a sound recording containing a song you represent. It will need to contain the following pieces of information:

- Details of parties involved
- Release title
- Release date
- Artist's name
- Format (CD, Cass etc)
- Total number of songs
- Retail/wholesale price
- Manufactured quantity
- Territory
- Royalty rate

Print Licences:

An agreement covering all types of print reproductions containing a song you represent, such as sheet music, lyric sheets, hymnals, wedding programs, novels etc. It will need to contain the following pieces of information:

- Details of parties involved
- Production title/ description
- Release date
- Total number of songs used/ and licensed from you
- Retail/wholesale price
- Manufactured quantity
- Territory
- Royalty rate

Synchronisation Licences:

An agreement covering the act of synchronising a music work (including a sound recording, if applicable) with other media. For example, film, video, radio programs and other presentations. It will need to contain the following pieces of information:

- Details of parties involved

- Production title/ description
- Release date
- Total number of songs, with durations of use
- Description of use
- Approved media
- Sound recording approval required?
- Territory
- Fee

5. *Prepare a business plan.* As the popularity of your songs increase so will the work load of your music publishing division, so it is important that from the beginning you have a clear plan and vision for this work.

6. *Build your network* of contacts. If you are contractually responsible to your writers to promote their songs, then your biggest challenge is to find ways of getting the songs used. Your obvious first place of use, will be the church, but the more people you talk to and the most work you put into it, the more this will increase.

7. *Create a database.* This can be anything from a simple Microsoft Excel spreadsheet or Microsoft Access database, to the more complex and expensive commercial systems available. It will be very helpful to you to have a database of your songs, and all of the details surrounding those songs.

Music Maestro by Counterpoint Systems is arguably the world leading music publishing royalties' software package. It handles song data, royalty payment, and distributions, song writers splits, income sources and more, but is really only for the serious publishers or publishers with larger song catalogues.

For more information: [Music Maestro](#)

Suggested links

www.musiccontracts.com - downloadable music business contracts created by an entertainment law firm for immediate download in Microsoft Word.

<http://www.mpa.org> – Music Publishers' Association (USA)

<http://www.nmpa.org> – National Music Publishers' Association (USA)

www.ampal.com.au - Australasian Music Publishers Association Ltd. (Australia/ New Zealand)

www.gospelmusic.org - The Gospel Music Association (USA)

www.gma-anz.org - The Gospel Music Association - Australia & New Zealand

www.copyright.gov – US Copyright Office (Library of Congress)

www.copyright.org.au – Australian Copyright Council

Suggested reading

- M. William Krasilovsky and Sidney Shemel, [*This Business Of Music*](#), Watson-Guptill Publications, 2000
- Shane Simpson, [*Music Business*](#), Omnibus Press, 2002
- Al Kohn and Bob Kohn, [*Kohn on Music Licensing*](#), Aspen Law & Business, 2002