

MANAGEMENT OF THE MECHANICAL RIGHTS IN THE UNITED STATES

PREPARED FOR BIEM

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Executive Summary

1

Streaming & downloads are the dominant form of music revenue in the US, generating US\$6.96 billion in 2017.

2

In the US, there is no single mechanical licensing agency or blanket license, but multiple agencies and a non-automatic, compulsory license.

3

The proposed Music Modernization Act would create a blanket license in the US and a single licensing collective.

4

BIEM members should utilize multiple mechanical licensing agencies in the US to guarantee the widest collection coverage.

5

Standardization of catalogue delivery and negotiation of new collection agreements in the US should be high priority for BIEM members.

Project Objectives

BIEM, the international organisation representing mechanical rights societies, requires reliable information regarding the Management of Mechanical Rights in the US. BIEM requires a qualified source to provide answers regarding rights flow, licensing and distribution in the physical and online US market. The aim is to bring transparency and a thorough understanding to BIEM's members regarding Mechanical Rights Management in the US.

As such, as we will address the Mechanical Rights market in the US, and examine the rights, rights flow, royalty handling, flow of monies, stakeholders, process, and procedures as well as current proposed US legislation that would impact Mechanical Rights licensing. The role and procedures of Harry Fox Agency, and other mechanical intermediaries in the US market (e.g. Music Reports, Inc, and Audiam) will be examined, including their technical capabilities. The report will focus on online exploitation (downloads and streaming). The research acknowledges the project objectives and will ensure specific questions and topics provided in the RFP document will be addressed.

Recommendations

- Standardize catalogue delivery to ensure accurate registration and matching
- Engage Harry Fox Agency, Music Reports, Inc. and Audiam to conduct an audit project of a subset of catalogue data from BIEM members
- Renegotiate agreements with Harry Fox Agency and enter into agreements with other Mechanical Licensing Agents
- Prepare to negotiate under Music Modernization Act

The recommendations are provided with more detail at the end of this report.

Defining Mechanical Royalties

Mechanical royalties are the royalties paid on a physical or digital copy, or reproduction, of a recorded song. Mechanical royalties are paid to publishers and songwriters for all the releases that feature the songwriter's material. In the US, mechanical royalties are paid to the publisher who in turn pays the songwriter, whereas in BIEM member territories, the royalty is paid directly to the songwriter by the society, unless there are contractual provisions to the contrary.

The below diagram shows the licensing and royalty arrangement for the song “Baby Boy”, by Beyoncé feat. Sean Paul.

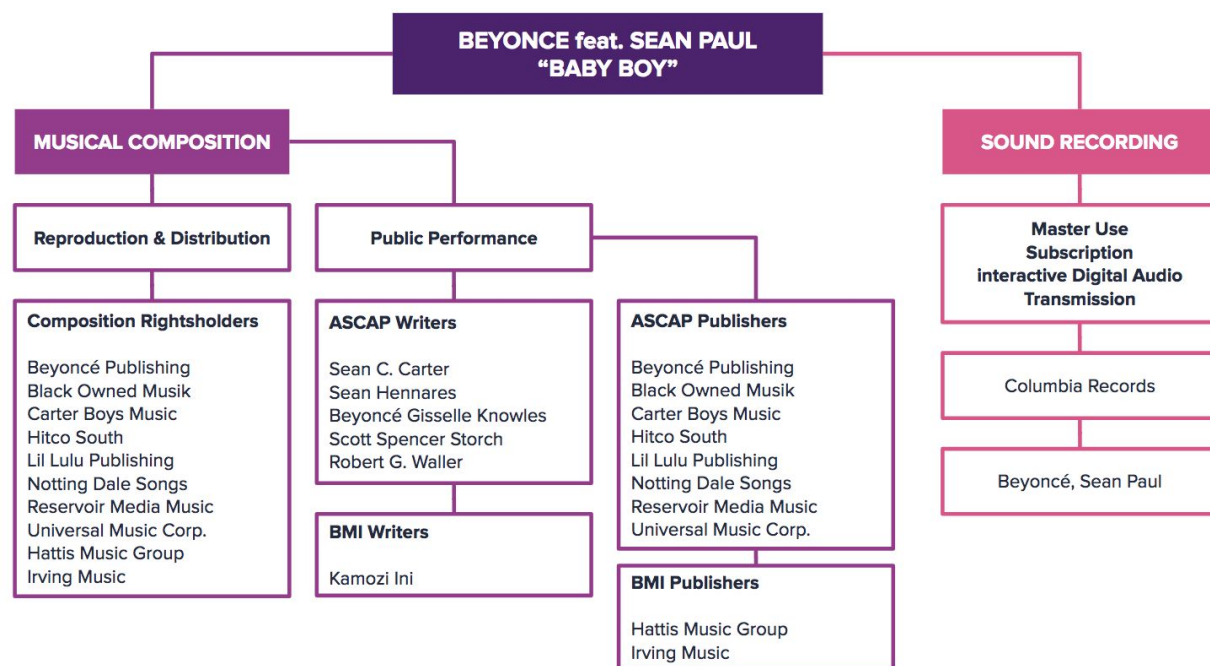


Figure (1). Licensing breakdown for the track “Baby Boy”. Source: **Rethink Music**¹.

¹ “Rethink Music report on Transparency”, **Rethink Music**

Looking at the graph above, mechanical royalties fall under the Musical Composition / Reproduction & Distribution category.

In the physical world, a mechanical royalty is paid on all the tracks that are on an album, or all the album a label presses and distributes. In the digital world, mechanical royalties are also paid on each stream or download of a song that features the songwriter's material.

The current copyright regulation was created before mass streaming platforms like Spotify and Apple Music existed, and while it has been updated to reflect the streaming market, there are still many challenges in how mechanical royalties are licensed and paid in the digital music market.

Mechanical Royalty Income in the US

Digital music, including downloads and streaming, has become the **dominant form of music consumption in the United States**², generating **US\$6.96 billion**³ in recorded music revenue, or 80 % of the market revenue, compared to US\$1.47 billion (17% of the market) in physical sales. Revenues from streaming increased 43% from 2016 to 2017.

² "RIAA Releases 2017 Year-End Music Industry Revenue Report", **RIAA**

³ **RIAA**

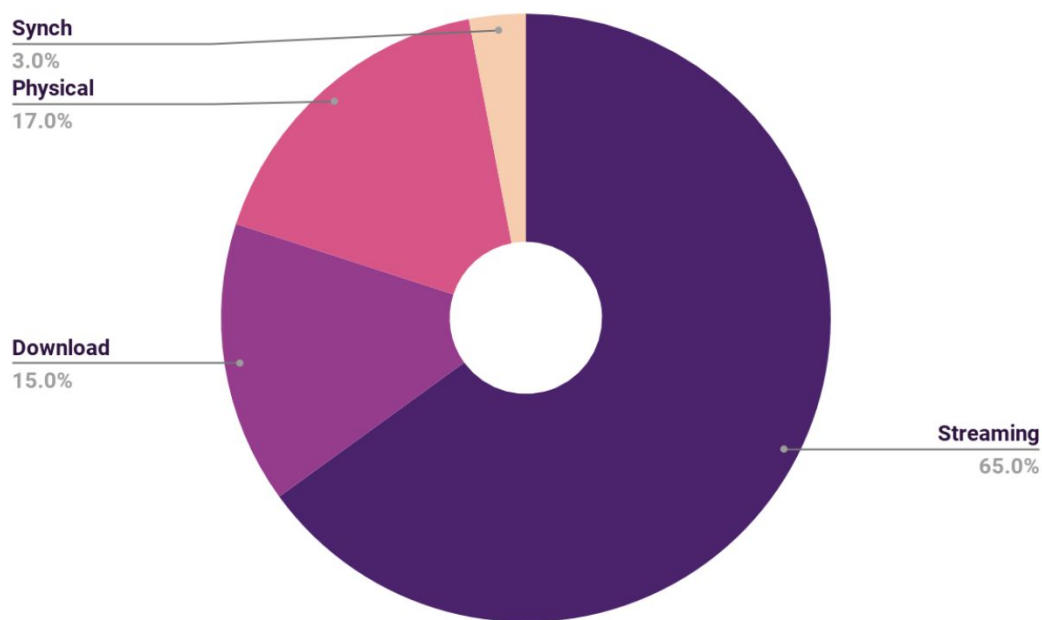


Figure (2). US Music Industry Revenues 2017. Source: **RIAA**⁴.

This change is also reflected in Reproduction Rights collection in the US, with digital increasing 104% between 2016 and 2017, accounting for US\$31 million in mechanical royalty payments, whereas CD & Video reproduction rights decreased 73% to US\$23 million. This data is available in the **2016**⁵ and **2017**⁶ CISAC Annual Collections Reports.

How Mechanical Rights Collection Works

Mechanical rights organizations have been established around the world to administer mechanical rights and collect mechanical royalties for their members. Typically, each territory will have a single mechanical rights organization to administer mechanical royalties. For most territories, this mode of collection has continued even as digital downloads and interactive streaming have become the dominant form of mechanical

⁴ **RIAA**

⁵ **CISAC Global Collections Report 2016**

⁶ **CISAC Global Collections Report 2017**

licensing and royalty generation, with a few exceptions coming into the market. There is a slight difference in how this flow of licensing and royalty payments works, depending on whether it is a stream, download or physical reproduction.

Figure (3) below shows how revenue is distributed from a digital sale, including the allocation for the mechanical reproduction of the composition.

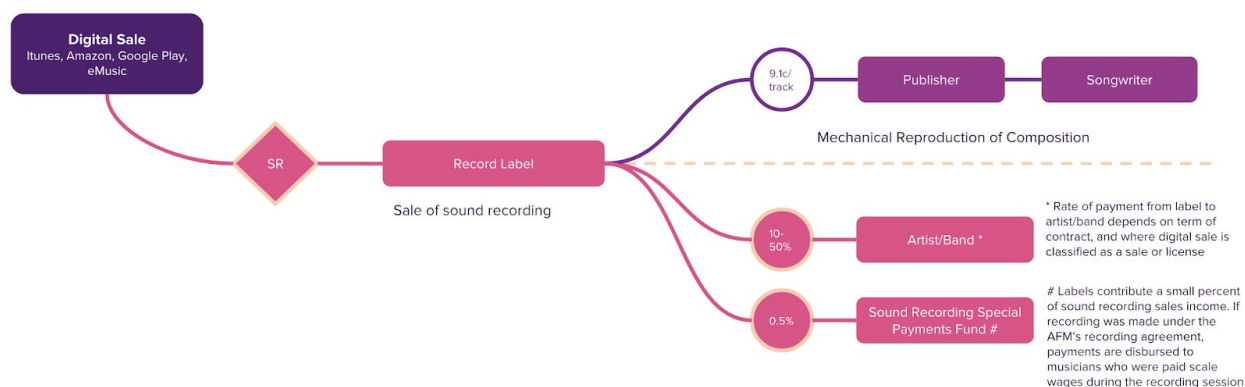


Figure (3). Distribution of revenue from a digital sale. Source: **Rethink Music**⁷.

Figure (4) below shows how revenue is distributed from a digital sale where a label has used an Aggregator or Distributor.

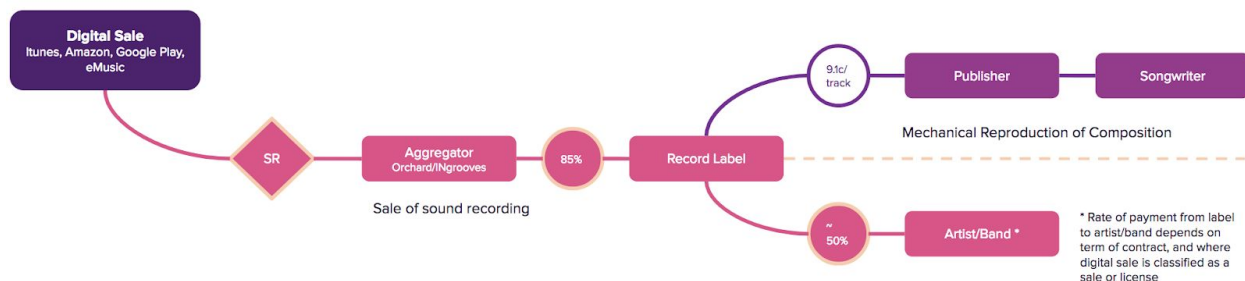


Figure (4). Distribution of revenue from a digital sale. Source: **Rethink Music**⁸

⁷ Rethink Music

⁸ Rethink Music

The statutory mechanical royalty rate for physical recordings (such as CDs) and permanent digital downloads or digital sales are the same, however for physical product, Labels pay the mechanical royalty fee at the time of reproduction (*before the point of sale*), whereas with digital goods, it is *post-sale*.

Figure (5) below shows how revenue is distributed from an on-demand stream, including how the mechanical royalty payment is allocated.

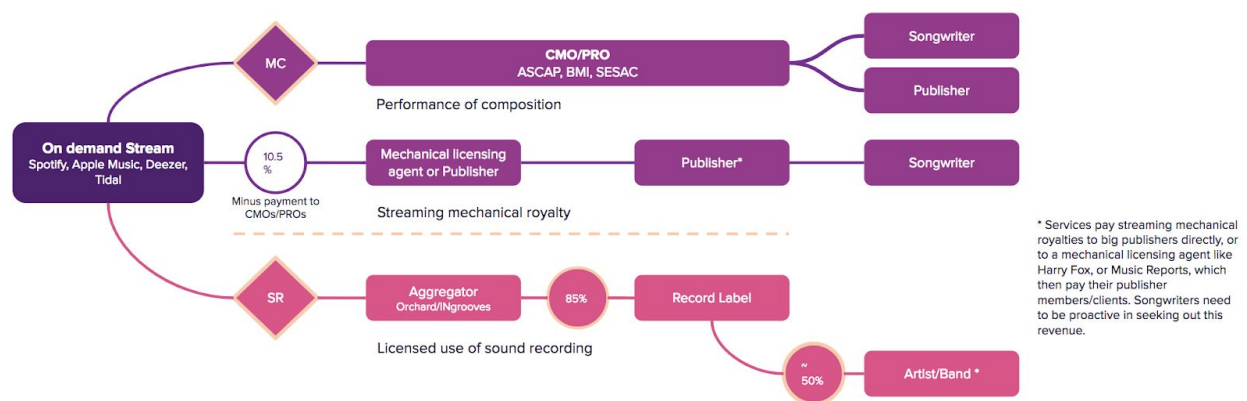


Figure (5). Distribution of revenue from an on-demand stream. Source: **Rethink Music**⁹

Interactive streams are also subject to performance royalties. Digital streaming services provide usage reports to Performing Rights Organizations (PROs), who in turn calculate a unique royalty rate for each work. This is typically based upon the license fees collected from the service that performed the work in combination with the number of times each work streamed on the service. Rates are set each year and are negotiated between the PRO and the digital service provider and is an approximate (although unconfirmed) rate of 6-7%.

⁹ Rethink Music

In most territories around the world, BIEM members act as a single mechanical licensing collection agency, sitting between retailers, other societies and the publishers of that territory.

Imports & Export of Physical Products

Mechanical Licensing Agents in the US issue mechanical licenses that are valid for products manufactured and distributed in the US. Regardless of whether physical product is imported or exported into the US, a mechanical license fee is required. Physical product that is manufactured in the US and distributed into foreign countries must pay the current statutory rate in the US. When physical product is manufactured in a foreign country, even if mechanical license fees are paid in the country of manufacture, a mechanical license and its applicable fees are required once the product enters into the American market.

There is a distinction between the licenses that are available for the reproduction of physical products and digital reproductions. Because of this distinction, a foreign licensee can get mechanical licenses from US Mechanical Licensing Agents to distribute in the US, regardless of the country in which the computer server transmitting the digital reproduction is located.

Private Copying

A "private copy" is a copy of a sound recording, or a substantial part of a musical work, of recorded music that is made by an individual for his or her own personal use. Does US Copyright Law allow private copying as an exception from the author's right to decide whom to grant the right to make use of his/her protected works? Yes. The Audio Home Recording Act of 1992 provides that a consumer's non-commercial use of a digital audio

recording device, a digital audio recording medium, an analog recording device, or an analog recording medium shall not constitute copyright infringement. A royalty of 2% is provided for the initial transfer price for devices and 3% for media. This only applies to CDs which are labeled and sold for music use; they do not apply to blank computer CDs. **First distributors are obliged to pay compensation for the rightsholder**¹⁰. Royalties are paid to the Register of Copyrights and deposited in the Treasury of the United States. During the first two months of each calendar year, interested copyright parties seeking to receive royalty payments can file with the Copyright Royalty Judges a claim for payments collected during the preceding year. Private copy royalties are largely generated in the US by the **sale of blank CDs and personal audio devices, media centers, satellite radio devices, and car audio systems that have recording capabilities**¹¹.

US vs. Rest of World

Mechanical rights administration in the United States is setup very differently to the rest of the world. In the United States, mechanical royalties are not administered by one single entity, with multiple organizations offering mechanical royalty licensing and administration services. These are referred to as Mechanical Licensing Agents, or MLAs.

As digital streaming music has grown, so has the volume of data generated that is required for royalty processing, placing tremendous technical strain on labels, publishers and societies to efficiently calculate owed monies. With the US being the largest streaming music market in the world, and the fragmentation of Mechanical Licensing Agents, the US market has grown more confusing and inefficient.

¹⁰ "Quick Guide to Private-Copy Levy Systems", **World Law Group**

¹¹ "What is AARC?", **Alliance of Artists and Recording Companies**

Compulsory Licenses in the US

While the rest of the world uses a single mechanical rights society in their respective territories to administer mechanical royalties via a blanket license, the US operates under a compulsory license.

In the United States, once a recording of a musical work has been publicly distributed in the United States with the copyright owner's consent (called "first use"), anyone else may, under certain circumstances and subject to limited conditions, obtain a "compulsory license" to make and distribute phonorecords of the work without express permission from the copyright owner.

This contrasts with a blanket license, in that performing rights organizations and collecting societies offer blanket licenses that allow a licensee to have access to a portion or complete repertoire of songs for a flat annual fee, or a percentage applied to the overall revenue.

Section 115 of the United States Copyright Act¹² defines the Notice of Intention (NOI) license. This is a non-automatic, compulsory license to exploit works, and the permission of the rights owner is not required.

Section 115 of the Copyright Act provides a compulsory license to make and distribute phonorecords once a phonorecord of a work has been distributed to the public in the United States under authority of the copyright owner, subject to certain terms and conditions of use. Such a license includes the right of the

¹² "Notice of Intention to Obtain a Compulsory License Section 115", copyright.gov

compulsory licensee to distribute or authorize the distribution of a phonorecord of a nondramatic musical work by means of a digital transmission, which constitutes a digital phonorecord delivery.

When a licensee wants to license a work but does not have information for the copyright holder or its representative, there is the ability to file a Notice of Intention (NOI) so the work can be used.

The licensee must file the NOI to the copyright owner within 30 days of licensing the catalogue. If the author or copyright owner is unidentified, the NOI must be filed to the United States Copyright Office.

Once the NOI is filed, the Digital Service Provider (DSP) may exploit the works and pay monthly mechanical royalties to a licensing agent, who could be the original owner of the copyright, a sub-publisher, or a mechanical licensing agent who forwards to the publisher, or the DSP may pay direct to the publisher themselves.

If the publisher or copyright owner is unknown, the monies are held by the DSP until the owner is identified and can be paid, or a settlement is reached, and funds are distributed based on market share, whichever comes first between a DSP and the copyright holders. This settlement is usually negotiated between the major publishers and the DSPs, or through court-ordered settlement as discussed below.

Songwriters and copyright owners can use the **NOI Lookup tool**¹³ provided by **SX Works**¹⁴, a division of **SoundExchange**¹⁵, to search their works in the NOI database. Publisher and writer clients of BIEM members can access the **NOI Lookup tool here**¹⁶ to

¹³ [SX Works NOI Login](#)

¹⁴ www.sx-works.com

¹⁵ www.soundexchange.com

¹⁶ [SX Works NOI Login](#)

view if their catalog is included in the author unknown NOI filings. Typically, the Publisher or Writer will have to follow up with the filing agent (Harry Fox, Music Reports, Inc., et al.), to determine what the value is, if any, and how the monies can be repatriated.

There has been great debate over the effectiveness of the use of NOI licensing with regards to streaming mechanicals. In 2017, Spotify reached a proposed settlement of US\$43 million in the case of **Ferrick vs Spotify USA Inc.**¹⁷ for improper filing of the NOI, or effectively, unlicensed use of works. Once the settlement is approved in the court, claim forms will be made available at **spotifypublishingsettlement.com**¹⁸.

Mechanical Royalty Rates

The mechanical royalty rates are set by the **Copyright Royalty Board**¹⁹. The Copyright Royalty Board (CRB) is a US system of three copyright royalty judges who determine rates and terms for copyright **statutory licenses** and make determinations on distribution of statutory license royalties collected by the **US Copyright Office**²⁰ of the **Library of Congress**²¹. The board was created under the **Copyright Royalty and Distribution Reform Act of 2004**²².

The rate for streaming mechanical royalties is not a set rate and is determined by several factors including service offering type, licensee type, service revenue, recorded content expense, and applicable performance royalty expense. While it follows a three-step process,

1. Calculate the all-in royalty pool

¹⁷ **Ferrick v. Spotify USA Inc.**

¹⁸ www.spotifypublishingsettlement.com

¹⁹ www.crb.gov

²⁰ www.copyright.gov

²¹ www.loc.gov

²² "Copyright Royalty and Distribution Reform Act of 2004", www.copyright.gov

2. Calculate the payable royalty pool
3. Allocate payable royalty pool

the variance in factors means the rate is constantly changing. Figure (6) below is an example provided by **Harry Fox Agency**²³ on how streaming mechanical royalties are calculated for non-portable subscriptions.

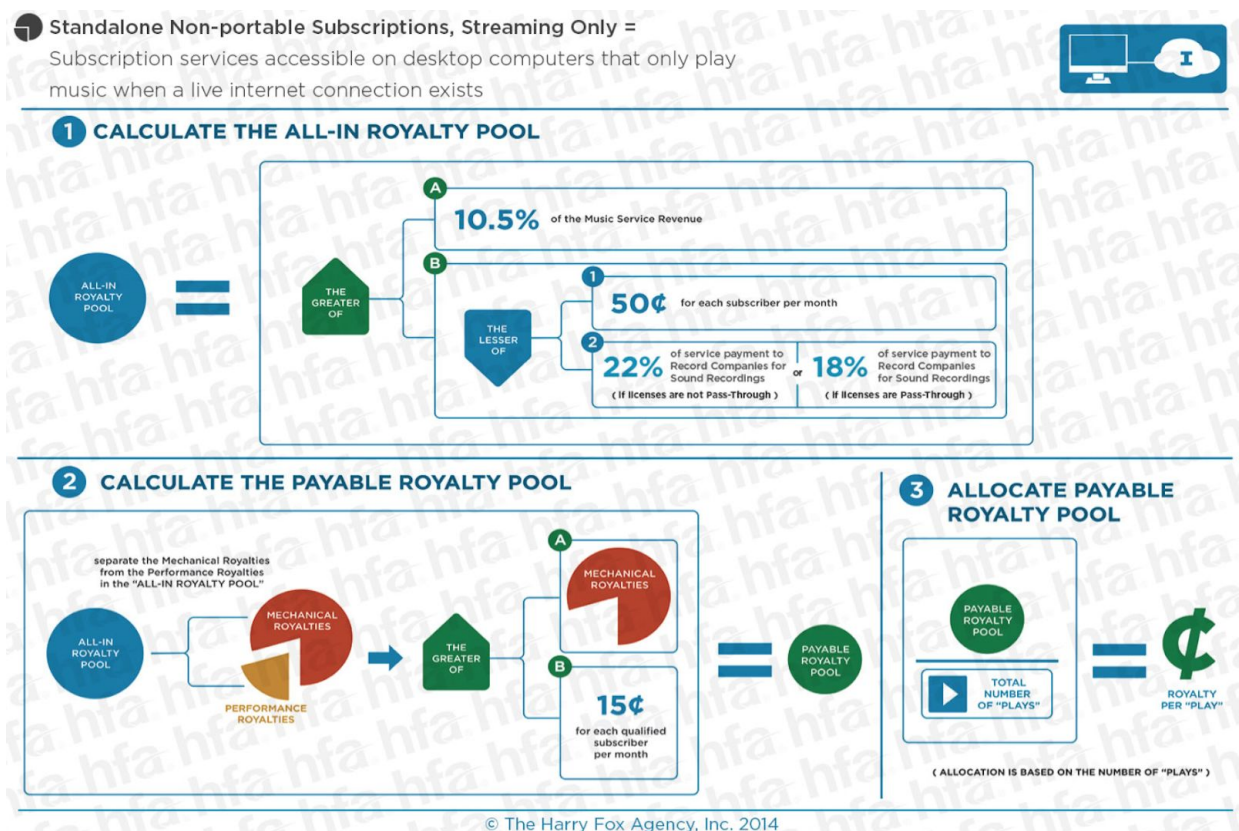


Figure (6). Source: Harry Fox Agency.

In January 2018, the Copyright Royalty Board ruled to **increase songwriter rates for interactive streaming services by 43.8%**²⁴ over a five-year period. Streamlined rate

²³ "Rate Charts", **Harry Fox Agency**

²⁴ "Copyright Royalty Board Boosts Songwriters' Streaming Pay Nearly 50%", **Variety**

terms replace complicated calculations with a simplified formula based on the “greater of” concept, however details are yet to be released.

The performance royalty rate is negotiated between the publishers and the Digital Service Provider. In this example above, the Digital Service Provider tells Harry Fox Agency the lump percentage that is to be paid to the Performing Rights Societies.

Still in effect for physical product and digital downloads is a statutory rate. The current statutory rate for this type of usage is 9.1 cents for up to five minutes, or 1.75 cents per minutes if over 5 minutes. The Harry Fox Agency provides more information on calculation on the mechanical royalty rate for physical sales and digital downloads.

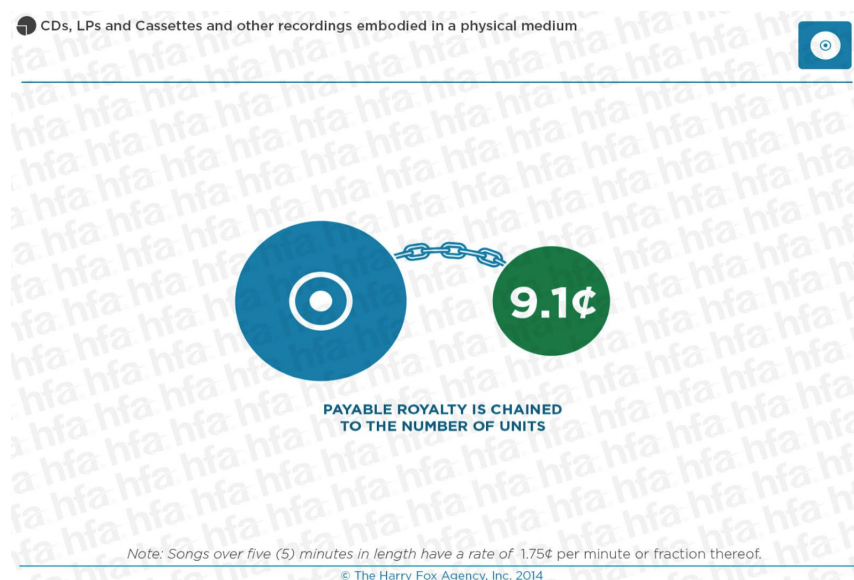


Figure (7). Source: Harry Fox Agency.

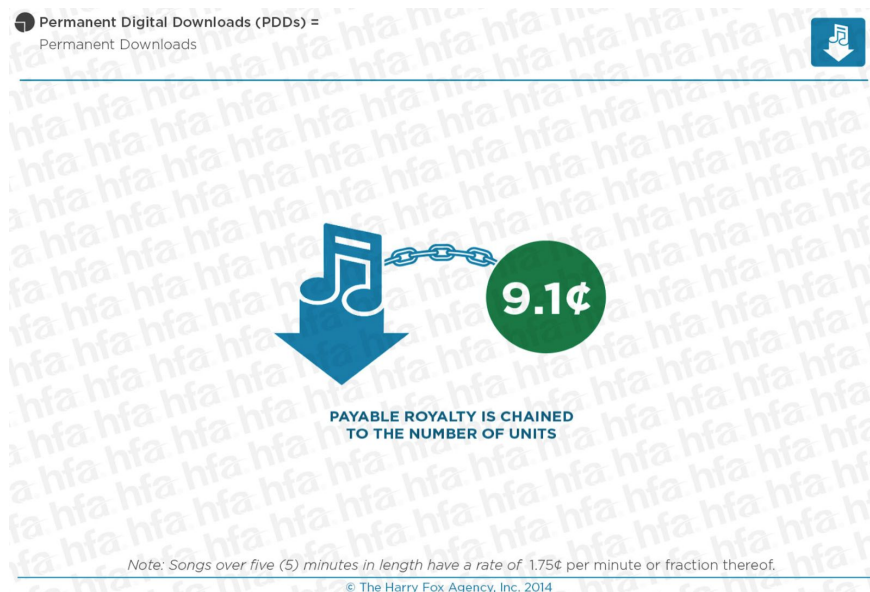


Figure (8). Source: Harry Fox Agency.

Publishers (and select Writers) can engage Harry Fox Agency for these licenses, as well as for import licenses where required.

Referring to Figures (3), (4) and (5) earlier in the report, whereas for physical reproductions and digital sales the mechanical royalty is paid by the Label, for streaming mechanicals the royalty is paid by the streaming platform.

Mechanical Licensing Agents (MLAs) in the US

As mentioned earlier, the US operates differently to most other territories in the world, in that there are multiple organizations that can license and collect mechanical royalties. Harry Fox Agency has been the dominant mechanical licensing society in the US and it was founded in 1927 by the **National Music Publishers Association**²⁵. Today there is also Music Reports and Audiam, who both specialize in digital mechanical administration.

²⁵ www.nmpa.org

There are also a number of mechanical licensing agents who provide services to smaller aggregators and distributors, normally with a particular focus on cover song licensing.

Because digital (download and streaming) is the dominant form of mechanical royalty revenue generation, we will largely focus on the role these organizations play in licensing and collecting mechanical royalties in the US, and how BIEM members can interact with these organizations where required.

Who administers for whom?

Company	Administers for	Notes
Harry Fox Agency ²⁶	Spotify, Apple Music, Facebook	Is employed by Spotify, Apple and Facebook to administer Mechanical Royalties. Publishers can be affiliates of Harry Fox Agency.
Music Reports ²⁷	Amazon Music, Tidal, Deezer, Soundcloud, Pandora, iHeart Media, SiriusXM, Musical.ly	Is employed by Amazon Music, Tidal, Deezer to collect. Music Reports does not have publishers as clients, only the streaming platforms.
Audiam ²⁸		Acquired by SOCAN. Can administer all streaming platforms through the compulsory license
Google	Google Play Music	Google acquired Rights Flow in 2011, that provided them with the technology to administer their own mechanical licenses.

Figure (9). A breakdown of who licenses for whom regarding mechanicals in the US.

²⁶ www.harryfox.com

²⁷ www.musicreports.com

²⁸ www.audiam.com

An exhaustive list of digital service providers and their affiliated Mechanical Licensing Agent is not readily available and client lists are not offered for public information by the Mechanical Licensing Agents.

It is important to note that Audiam and Harry Fox Agency (via **Rumblefish**²⁹, another SESAC **acquisition**³⁰) can administer collections for YouTube. While not a mechanical license or royalty, YouTube monetizes audio through its Content ID system. This is discussed further below.

Of contention is the agreements between the streaming platforms and Harry Fox Agency and Music Reports, Inc. Both companies are paid by the streaming platforms to administer the mechanical licenses, and both companies also charge a service fee to publishers for administration, leading to charges of “double-dipping” in their fees.

In April 2018, **Spotify acquired Loudr**³¹, a mechanical licensing agent in the US who traditionally worked with CD Baby and other small aggregators, hence it is very likely that Spotify will attempt to administer their own licenses, like Google.

Technical Analysis

Harry Fox Agency claims to have the most extensively matched database due to their decades of operation. It is important to note that Harry Fox Agency was hired by Spotify to administer its mechanical license, which it ultimately did not do in accordance with US legislation, resulting in the previously mentioned lawsuit against Spotify. There is great conjecture over the reasons why the mechanical licenses failed to be securely properly,

²⁹ www.rumblefish.com

³⁰ “SESAC Offers Micro-Licensing Opportunities for Affiliates Through Subsidiary Rumblefish”, **SESAC**

³¹ “Spotify acquires music licensing platform Loudr”, **TechCrunch**

from Harry Fox Agency not being able to correctly match, to Spotify not providing the correct data and Harry Fox Agency not filing within the correct time periods. Harry Fox Agency accepts CWR and its own eSong Excel Spreadsheet template (a link to this spreadsheet is provided later in the report).

Audiam was founded by Jeff Price, who was one of the founders of TuneCore. Audiam pitches itself as being a *digital-first* licensing agent, with big data and advanced analytics capabilities. Audiam claims to accept almost all data formats and does not limit its clients to CWR or Excel. Most recently, **Audiam announced Layla**³², an advanced income tracking and reporting suite developed for publishers that promises to deliver transparency to the royalty system. While not having any direct deals with Digital Service Providers as Harry Fox Agency and Music Reports, Inc. do, Audiam is still able to issue mechanical licenses and distribute mechanical royalties to its publisher clients via the compulsory license. Audiam recently began work with Pandora to audit its recording-composition matching and licensing capabilities.

Music Reports, Inc. is a Mechanical Licensing Agent that works with the Digital Service Providers as clients and does not have publishers as clients. Digital Service Providers hire Music Reports, Inc. to send mechanical royalty payments to the owed publishers and songwriters. In 2016, Music Reports, Inc. launched the **Songdex Claiming System**³³, that allows publishers to review data about unmatched tracks, find titles that have not yet matched, and tie them to the publisher's own song data. An analysis of Music Reports' technology did not eventuate due to Music Reports being non-responsive to meeting requests.

³² "SOCAN promises more transparency with 'Layla' royalty system", **MusicAlly**

³³ www.musicreports.com

Film & Video

A video with music contains three copyrights: the video images, the sound recording, and the underlying song composition (music publishing rights). In a video where an artist is performing a cover song, the artist (or label) might control the copyrights to the video images and sound recording but don't control the music publishing copyrights. To use the song composition, artists or labels need to negotiate a synchronization license directly with the music publisher.

When music is used in a film, television program or video, a Synchronization and Performance License is issued to the publisher or its representative. In today's world, all licenses include all rights, though television licensing excludes theatrical rights, and particularly broadcast mechanicals. Historically, publishers were paid a *per unit* rate on videos, laser discs or DVDs, however it is rare for a publisher to receive such an agreement today. The payment is all inclusive for all rights now known or hereinafter devised.

For a digital video channel like YouTube, music videos or videos containing music are monetized through YouTube's advertising model. For videos to claim revenue, they are required to be assigned a YouTube Content ID. This ID is then used to track all uses of the music across YouTube's video library. Audiam and SESAC's Rumblefish provide YouTube monetization services as well as their mechanical licensing services.

The Music Modernization Act

In December 2017, with heavy lobbying from National Music Publisher Association (NMPA) President David Israelite, US Representative Doug Collins proposed the **Music**

Modernization Act of 2017³⁴ (MMA). The MMA has already been approved by the House of Representatives and is now waiting on a vote by the Senate.

The bill, amongst all other matters, proposes to reform Section 115 licensing, ending the bulk Notice of Intent (NOI) process through the Copyright Office.

Under the updated legislation, digital music services would fund a Mechanical Licensing Collective (MLC) and would be granted blanket mechanical licenses for interactive streaming or digital downloads of musical works. It's proposed that the MLC would be governed by publishers and self-published songwriters. This Mechanical Licensing Collective would stop Harry Fox Agency, Music Reports, Audiam and any other Mechanical Licensing Agent from offering those mechanical licensing services in the United States.

The bill is also said to create business efficiencies for the digital services by providing a transparent and publicly accessible database housing song ownership information. Additionally, because the database would publicly identify songs that have not been matched to songwriters and/or publishers, publishers would also be able to claim the rights to songs and get paid for those songs. It is important to remember that the passing of the Music Modernization Act is in process and not yet legislated. Within the past couple of weeks, a senator introduced a new bill called **ACCESS**³⁵ which challenges many of the MMA's suggestions.

Collecting from the US

Currently, many BIEM members have historical reciprocal agreements with Harry Fox Agency for collecting mechanical royalties from the United States. Because of the

³⁴ "Music Modernization Act", [congress.gov](https://www.congress.gov)

³⁵ "ACCESS to Recordings Act", [senate.gov](https://www.senate.gov)

fragmented nature of how streaming licenses are administered in the US, these agreements are neither efficient nor are ensuring total catalog collection for BIEM members.

Under these agreements, it typically means that collection is only happening consistently for Spotify and Apple Music from the United States.

After speaking with the major mechanical licensing agents in the United States, to ensure almost 100% of collection, it is recommended that BIEM members negotiate agreements with Harry Fox Agency and Music Reports at a minimum. This was an approach recommended by Harry Fox Agency.

For a BIEM member, the collection market is represented in Figure (10) below.

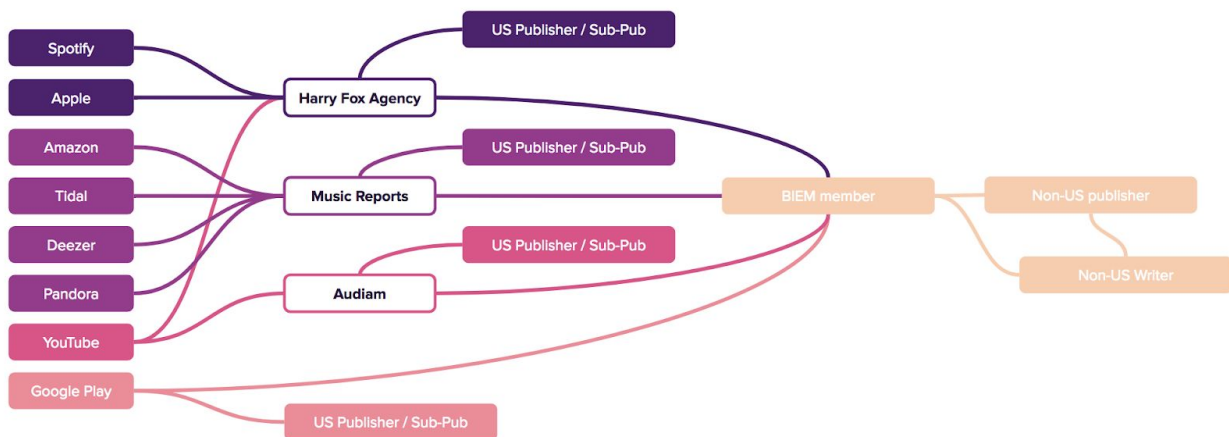


Figure (10). The current flow of licenses and royalties for BIEM members collecting from the US.

This chart is for representation purposes and does not include all streaming platforms and mechanical licensing agent that may represent each platform.

Under the proposed changes in the Music Modernization, mechanical licensing and collection would occur under a single licensing collective, where the licensing and flow of royalties would look something like the below chart.

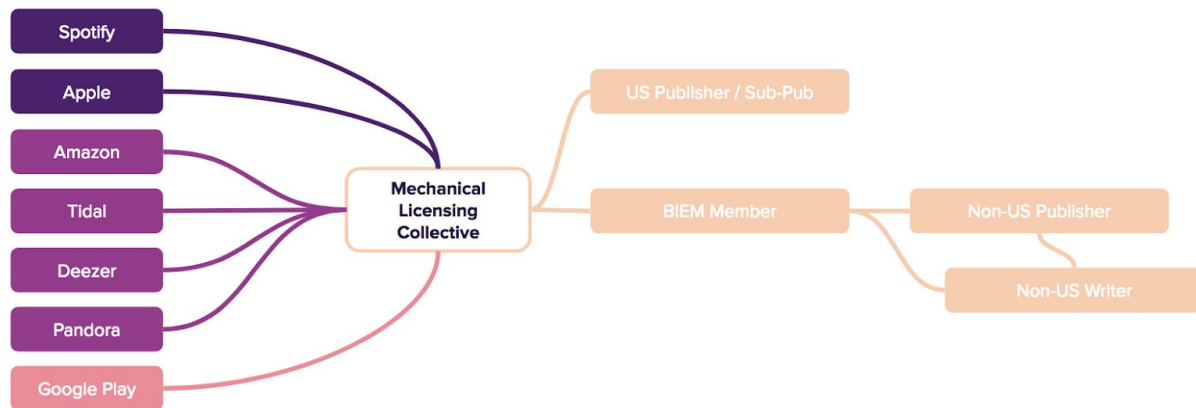


Figure (11). What the flow of royalties will look like under the proposed Music Modernization Act.

In addition, historically BIEM members have not consistently collected a writer's share directly when there is a publisher or sub-publisher that is not owned by the writer. This may be of interest for BIEM to explore in the future how they want the writer's share to be collected via a publisher or directly.

Challenges with Collection from US Market

Catalogue registration

The dominant mechanical rights society in the US, Harry Fox Agency, currently accepts catalogue delivery in CWR or their own "eSong" Excel spreadsheet template. If the catalogue is not being delivered in either of those formats, it is unlikely that Harry Fox Agency is licensing those works or collecting royalties associated with those works. In

2015, SESAC acquired **Harry Fox Agency**³⁶ from the National Music Publishers' Association (NMPA). Harry Fox Agency has undergone an internal program of merging the databases of Harry Fox Agency, SESAC and RumbleFish. Through the acquisition, Harry Fox Agency should (presumably) now have access to CIS-NET, whether it is being used or not is not information being offered.

Exclusivity no longer applies

Most of the original agreements with Harry Fox Agency were exclusive agreements, where Harry Fox Agency was the exclusive administrator of the BIEM member catalogue in the United States. These exclusivity agreements are no longer effectual, so to collect accurately from all DSPs in the US market requires registering catalogue with other MLAs in the US.

Recording to Composition Matching

The music industry has long sought to create a comprehensive database of matched recordings-to-compositions. Without such a database, there is a continued challenge in ensuring the correct recordings are matched to the correct compositions, and the licensing and royalties are administered and paid correctly.

There are several initiatives that aim to create such a database. In 2016, Collective Management Organization SOCAN acquired **MediaNet**³⁷ and **Audiam**³⁸, allowing SOCAN to match Medianet's 60 million+ sound recording data to SOCAN's 25 million+ composition data records. Audiam is currently able to exploit this in their offering and claim to have a higher match rate for works and recordings.

³⁶ "SESAC Finalizes Acquisition of Harry Fox Agency", **Billboard**

³⁷ "SOCAN acquires MediaNet", **SOCAN.ca**

³⁸ "SOCAN acquires Audiam on heels of MediaNet purchase", **SOCAN.ca**

At this stage, it is very difficult to assess who offers the most reliable service, only output and deliverability can decide that. In our recommendations below, we recommend engaging Harry Fox Agency, Music Reports, Inc. and Audiam in a small audit project to gauge their accuracy and capabilities.

As more information is known about the Music Modernization Act, it is looking likely that the proposed Mechanical Licensing Collective will use SX-Works, the publishing division of SoundExchange, as its backend data service. This gives the service the benefit of matching SoundExchange's extensive recording catalog to SX-Works' publishing catalogue that SoundExchange gained access to when it acquired the **Canadian Musical Reproduction Rights Agency**³⁹.

Recommendations

Standardize catalogue delivery

It is recommended that BIEM members with current agreements with Harry Fox Agency ensure catalogue is delivered in acceptable CWR format or in the provided "eSong" excel spreadsheet template. **Download the eSong template file here**⁴⁰.

If required, we can build a simple data processing tool that would allow BIEM members to submit their catalog in a CSV or CWR format and export to the eSong template format, matching the column headers and cleaning up any text or data errors that may stop the catalog from being properly ingested and reported on with Harry Fox Agency.

³⁹ "SoundExchange Acquires Canadian Musical Reproduction Rights Agency (CMRRA)", [Soundexchange.com](https://www.soundexchange.com)

⁴⁰ [eSong Template Download](#)

Audit project

Due to confusion over the licensing structure and opaque payments reporting, it is recommended that BIEM members engage the three main mechanical licensing agents (Harry Fox Agency, Music Reports and Audiam) in an “audit” comparison project.

This would involve providing each of these companies with a subset of data and request an audit of collections, where they will analyze the usage data for the reporting period and compare that with payments made to the BIEM member society.

Renegotiate agreements through a representative

Given the constant changes, new rulings and numerous parties involved, the best representation for foreign mechanical societies in the US is to affiliate with an organization or person that can oversee US operations. There are several individuals who work with societies and it is their job to be sure titles are properly identified and registered. They could also ensure a writer’s share is consistently collected for BIEM members when there is a publisher or sub-publisher that is not owned by the writer. Given her decades-long work in publishing administration and as a lawyer, this is a service Sindee Levin can provide to BIEM members.

Prepare to negotiate under MMA

As the Music Modernization Act moves closer to being legislated, it is in the interest of BIEM member societies that theirs and their publisher client interests are accounted for in the legislation, and we suggest that BIEM utilize a representative in the United States to proactively engage the MMA’s primary sponsors — the NMPA.

BIEM members need to keep up to date on these matters and start preparing to negotiate new reciprocal agreements with the proposed Mechanical Licensing Collective that is at the heart of the proposed new licensing structure.

Dictionary

Term	Definition
Interactive stream	A type of stream where the user can select the music they listen to (Spotify, Apple Music).
Non-interactive stream	A type of stream where the user is <u>un</u> able to select the music they listen to (Pandora).
Digital	A release that is digital media only (download, stream, etc.)
Physical	A release that is a physical product (tape, album, CD, etc.)
PRO	Performing Rights Organization
CMO	Collective Management Organization
DSP	Digital Service Provider. A company that provides digital media retail services (Spotify, Apple Music, eMusic, Amazon Music, Google Play, Tidal, Beatport, etc.)
MLA	Mechanical Licensing Agent.
MMA	Music Modernization Act. Current legislation being considered by the US government that would see the removal of the compulsory license and the installation of a blanket license for mechanical royalties.
MLC	Mechanical Licensing Collective. The single licensing entity under the proposed Music Modernization Act.
First-use	Under US Copyright Law, a songwriter and their music publisher have approval rights over the first recorded and released version of a newly written composition (i.e., a “first use” license). After a composition has been released to the public with authorization on a CD, record, or digitally, any other recording artist has the right to record and release that composition, subject only to the payment of mechanical royalties to the writer and music publisher.
NOI	Notice of Intention. A compulsory license under the US Copyright Act
Writer’s share / Publisher’s share	There are two shares of royalties for each writer when a song is created. Each writer has a “writer’s share” and a “publisher’s” share. So, if there are two writers on a song, there are four shares assigned to that song. Two writer shares and two publisher shares. The way those shares are divided depends on the contracts that the writers have entered

About the Authors



Sindee Levin Music was established by entertainment lawyer and music publisher, Sindee Levin who has more than 30 years of experience with rights management in music, film and television, for both domestic and international markets.

paperchain

Paperchain allows media companies, such as record labels, film production companies, digital publishers and news organizations, to tokenize their daily media transaction data into assets that can be sold to a global investment network on a decentralized marketplace, meaning revenue can be accessed months ahead of current industry pay cycles. Visit www.paperchain.io for more information.

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