CMCNY

Council of Music Creators of New York

Issues of Importance: The Culture of Collaboration

Over the past century, many of the songs that have thrilled music lovers the world over have been written by collaborators. This is true not only of great songs created by enduring teams, like Richard Rodgers and Oscar Hammerstein III, John Lennon and Paul McCartney, and Brian Holland, Lamont Dozier, and Eddie Holland, but of literally tens of thousands of memorable creations by *ad hoc* partnerships.

Collaboration in creating words and music has been and continues to be a way of life for the vast majority of working songwriters, regardless of the genre(s) in which they work. In fact, there is a **culture of collaboration** in songwriting, the best qualities of which are reinforced by law and tradition. Sadly, that culture and the wonderful results it has produced are now threatened by the Direct Licensing[1] of music rights.

First, a little background. The U.S. Copyright Act stipulates that the rights in and to a song are equally divisible by the number of contributors who agree to have their contributions memorialized in that composition. In other words, when two songwriters collaborate to create a new work, the rights to it are split 50%-50%. When three songwriters collaborate on a new song, the rights to it are split 33.33%-33.33%-33.33%. And so on. Songwriters are free to arrive at different "splits" acceptable to them—and they do—but the law sets as a default position an equal division.

Songs earn royalties through two basic streams: **mechanical royalties**, which result from the sale of recordings of their compositions, and **performance royalties**, which result from public airing of their work, whether on radio, TV, internet, in concert, etc.

For mechanical royalties, the Copyright Act sets a minimum rate due the owners of a copyrighted song for each copy of a recording containing that song that is sold. As music business insiders have long known, this is the equivalent of a "maximum wage" for songwriters; why would users pay any more than the law requires?[2]

In the United States, performance royalties are collected for copyright owners by one of three Performing Rights Organizations[3], which issue licenses for public performance, survey media for the actual performances, collect royalties, and distribute them to their members.

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[1] For a detailed explanation of this issue, please see MCNY's **Comparison Between Direct Licensing and Collective Rights Management.**

[2] For the past 30 years, under a concept known as the "Controlled Composition Clause," record labels have demanded that copyright holders accept a lower mechanical royalty rate.

[3] There are currently three American PROs: the American Society of Composers, Authors & Publishers (ASCAP), owned by its constituent songwriters and publishers; Broadcast Music, Inc. (BMI), owned by broadcasters; and SESAC, is a privately held company. Every other country that recognizes performing rights has only one organization, which is usually state-run.

For mechanicals, songwriters are entitled to an accounting of the sales that result in the royalties they receive. For performance royalties, PROs are required to provide transparency to copyright holders. While there may be minor variations between what each of the PROs collects and pays, and disputes between users and writers and writers and their PROs over payments, the mechanical and performance royalty systems have worked well for nearly a century. And that's true in part because they are rights-driven, not market-based.

This system has helped to create an important element of the culture of collaboration: any contributor to a musical composition, regardless of their level of experience or success, is guaranteed an equal and identical songwriting royalty to his/her collaborator(s). That's not to say that two writers can't agree to an unequal division of the rights; it's only to say that most often, they benefit equally.

Over time, what this has meant is that the songwriting community embraces newcomers and treats them fairly, and this results in a culture of collaboration that has produced not only a continual flood of new blood, upward mobility based on talent and success, but a collegial relationship among peers that is second to none. Most of all, it has aided in the creation of great songs, a vibrant source of economic productivity and a vital contribution to the world's culture.

How does Direct Licensing have the potential to irrevocably change the culture of collaboration? Direct Licensing is a market-based system under which music publishers negotiate with users royalty rates and fees. The resulting revenue is collected directly by the publisher—bypassing the PRO—and paid to the songwriter, according to the terms of their agreement with the music publisher.

Under Direct Licensing, performance royalties are no longer determined by negotiations between users and PROs, acting on behalf of groups of songwriters. The net result: an Unknown Songwriter who collaborates with a Better Known Songwriter is likely to receive less than the Better Known Songwriter for the royalties their song earns. What's more, since the rate of performance royalties Unknown and Better Known receive are determined by their ***individual*** agreements with their publishers (not by the process of their PRO), there is no transparency, far greater potential for accounting irregularities, and far fewer organizational or legal remedies of errors.

In the end, the songwriter, whose work is the foundation of this entire enterprise, will never again be certain whether the royalties s/he is receiving are accurate and fair or how they compare to what his/her peers are receiving.

As a result, the culture of collaboration is likely to become far more competitive and unequal. Market forces being what they are, over time, songwriters can expect to see their overall share of the revenue their work generates—already, an alarmingly small piece of the music pie—diminish.