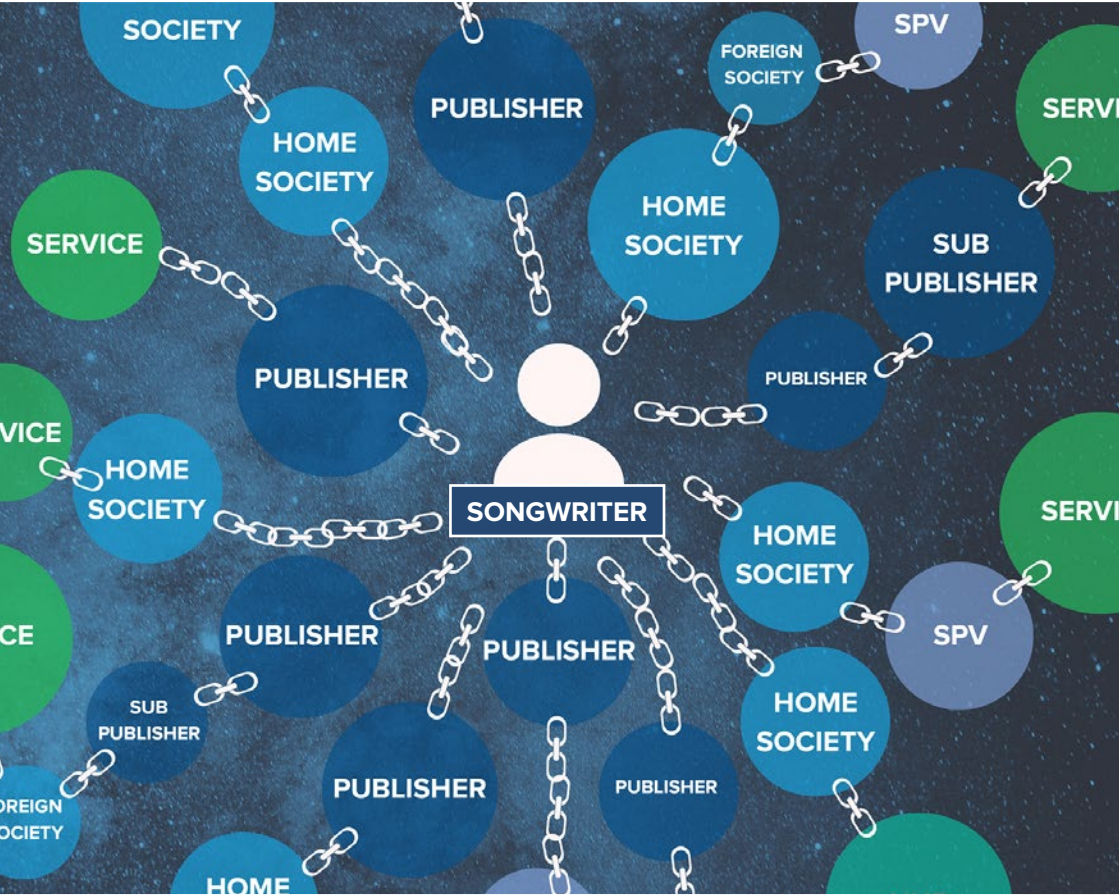


THE \$ONG ROYALTIES GUIDE



**DISSECTING THE
DIGITAL DOLLAR**

themmf.net/digitaldollar



Introduction & Executive Summary

The MMF has spent the last few years exploring how money flows from streaming services through to artists via our ‘Dissecting The Digital Dollar’ series of reports and guides produced with CMU Insights. This has included reviewing the debate around how the ‘digital pie’ is sliced, ie the ongoing discussions over how streaming income is shared out between the different stakeholders, including artists, songwriters, labels, publishers and the streaming services themselves.

A key part of that debate is how money paid into the music industry by the streaming services is respectively allocated to the recording copyright – which is ultimately shared with the artist – and the separate song copyright – which is ultimately shared with the songwriter. In the main considerably more is allocated to the former. As streaming has become the fastest growing recorded music revenue stream there has been much debate about the fairness of these splits.

That debate continues. However, while there is still an argument that the digital pie should be further resliced to the benefit of the songwriter, it is also true that more money is already being allocated to the song on streams compared to what was passed to the publisher and the writer from the sale of a CD. In fact in some cases, with the more recent streaming deals, the song allocation on a stream is **more than double that on a CD.**

Meanwhile, streaming income now

generates nearly half of recorded music income overall and continues to rise month on month.

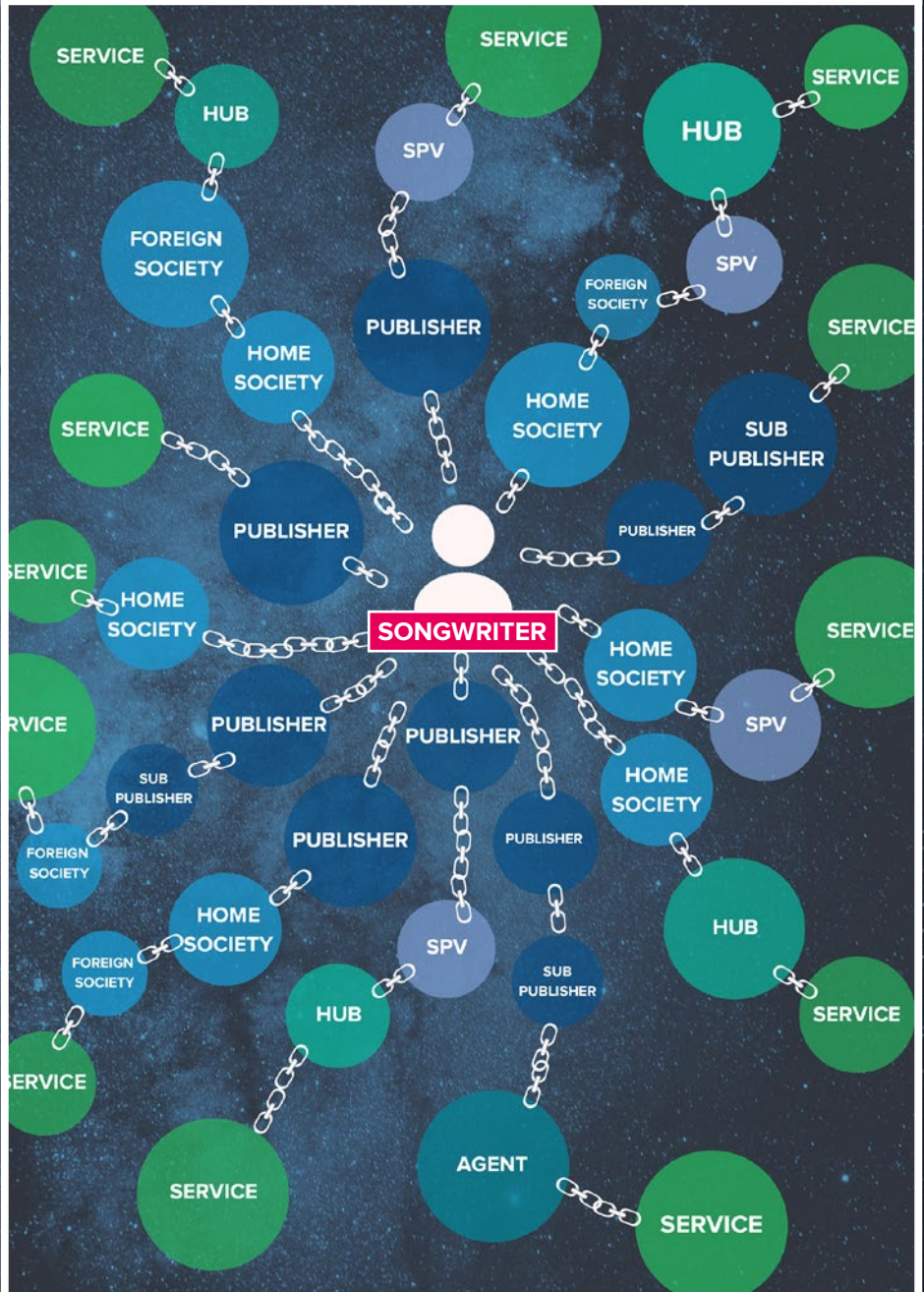
This creates a conundrum. As streaming becomes the biggest recorded music revenue stream – and with the song share on that income being double that on a CD – songwriters should be slowly starting to see a benefit. But songwriters and their managers insist that is not happening.

There are a number of factors that in part explain this conundrum, including the increasing number of co-writers on songs in some genres and the way monies are shared out between the different works on an album in the streaming domain. However, perhaps the biggest factor is the inefficient process via which song royalties from streams are processed and paid.

In most cases, sitting between a streaming service and the artists and songwriters whose music they stream will be a number of music industry institutions. These are the entities with which the streaming services negotiate licensing deals.

Once the deals are done, each month the services pass data and money over to each licensing partner. These licensing partners then pass money along to the artists and songwriters, sometimes directly, sometimes via other companies or organisations. This therefore creates a royalty chain – a number of entities through which data and money must pass as it goes from streaming service to artist or writer.

THE COMPLEXITIES OF THE ROYALTY CHAIN



For various reasons outlined in this guide, these royalty chains are much more complicated on the songs side of the music rights industry. There are more royalty chains in play. Longer royalty chains are more common. Significant delays can occur at each link in the chain. What monies are being deducted along the way often isn't clear. And the songwriter – compared to the artist – is much more reliant on the capabilities of the first link in the chain – with which they will often have no direct contact – to get paid at all.

Through this latest phase of the Digital Dollar research with CMU, we've discovered that fixing all of these inefficiencies is like solving a Chinese Puzzle. Even if you can identify the numerous and interlocking problems, how to best tackle each issue so to ensure that royalties flow and creators are paid remains an almighty challenge. Co-ownership of songs, the way copyrights are split, territorial licensing and poor data all contribute to an overly complex system, and cause the disputes, delays and deductions that stop songwriters getting properly paid when their music is streamed.

Clearly, there are no silver bullets. A plethora of reforms are needed, some of which are already under way in some territories with some repertoire. But to ensure every songwriter is treated fairly, there is an urgent need for a wide-ranging plan of action – led by writers and their managers and other professional advisors (lawyers and accountants), alongside music publishers, collecting societies and streaming services. Laying down

the gauntlet, MMF would suggest the following areas as an immediate priority...

1. Shine a light on global royalty chains

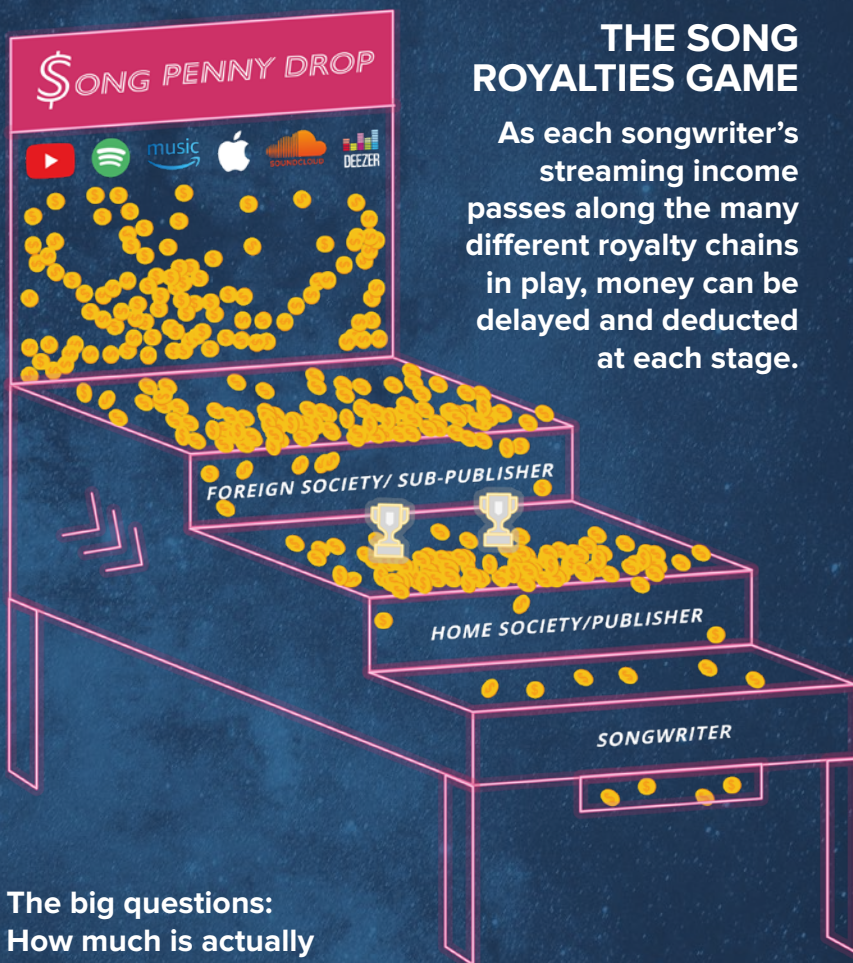
Given the complexities of the global digital licensing landscape, it has become too onerous and expensive for all but the most successful songwriters to track and trace their royalties. This needs to change. Collecting societies and music publishers must embrace transparency and move towards making crucial data freely available as standard practice – and especially information relating to the ownership of rights, the royalty chains being employed, and any deductions and delays that occur as money moves along those chains.

2. Reveal the disputes

Music publishers, collecting societies and their royalty processing hubs currently control the flow of songs data between the music industry and the streaming services, and are therefore the first to see the common data clashes that can delay or stop payments. It is unacceptable that they sit on these issues and we need them to proactively alert songwriters whenever data clashes occur so they know to resolve them and remove any blockages that are stopping royalties getting through.

3. Shorten the chains by embracing global licensing

If you were starting from scratch, no one would invent the current song licensing framework for streaming services. The current territorial



The big questions:
How much is actually getting through? And how long does it take for the money to reach the writer?

What royalty chains are in play will depend on a writer's publisher and society. Often writers are not aware of what chains are being employed, let alone what deductions and delays occur. So it's hard for writers to know just how much money is getting lost along the way.

approach and the employment of multiple royalty chains for single streams of single songs is the byproduct of systems, institutions and reciprocal partnerships that were created for an analogue era.

As well as efforts to better understand and disentangle current practices, there must also be a shift towards global licensing of the songs repertoire. Any new services and new markets should not be licensed locally – putting more links into the chain – and when deals are renewed with existing services, efforts should be made to shift ever closer to a global licensing approach.

4. Speed up the flow of payments

While many artists are now receiving payments within weeks of their music being streamed, it frequently takes writers years to receive all their song royalties. This is completely unacceptable. Even in the current environment, we should be setting goals that writers should never have to wait more than nine months after a song is streamed to receive payment in full.

5. Reduce black box collections and distribute unattributed revenues fairly

In theory, in the streaming space there should be no unallocated royalties, ie monies that we know need to be paid, but where we don't know which songs or songwriters those revenues should be allocated to. There should be no black box for streaming.

However, due to the above mentioned inefficiencies, a streaming black box

does exist – and it is filled mostly with royalties owed to smaller writers and publishers towards the end of the long tail. If, as is common in the songs business, this unallocated income is distributed to writers and publishers based on market share, you have a reverse Robin Hood system, whereby those writers and publishers who need the money most are least likely to get paid.

This also means that those perhaps best positioned to address the issues outlined in this guide are the least incentivised to do so. This is clearly untenable. We need more transparency from all stakeholders as to how much income is currently unallocated, what is happening to that income, and what publishers, societies and data processing hubs are doing to bring the amount of money that cannot be accurately distributed to the absolute minimum.

If some revenues cannot be attributed, then it is morally indefensible to redistribute them on the basis of market share. We would like to see a rigorous consultation within the songwriting community – and for these monies to be used for grassroots projects and initiatives.

6. Campaign for change

Finally, we need songwriters – and their managers and other professional advisors – to push each of the publishers and collecting societies they work with to actively and urgently address the issues outlined in this guide. And to celebrate those who are making positive changes to ensure that ongoing growth of the music industry is equitably shared by all.

Section One: Digital Dollar basics

The ‘Dissecting The Digital Dollar’ book explains in detail the deals that have been done between the music industry and the streaming services like Spotify, Apple Music, Amazon Music Unlimited, Deezer and Tidal. It also outlines the copyright law, contractual conventions and licensing practices that all had an impact on the way those deals were structured.

For a comprehensive overview of how it all works you should read the full book. Though here are ten key facts that will help you understand the way streaming royalties are paid and why there are different royalty chains. References to relevant sections of the book are also given.

1. There are two sets of music rights and two music rights industries: recording rights and song rights, respectively controlled and monetised by the record industry and the music publishing sector. [\(Section 2.1\)](#)

2. Copyright provides a number of specific ‘controls’ to the copyright owner. Music publishers often talk about ‘mechanical rights’, which include the reproduction and distribution controls; and ‘performing rights’, which include the performance, communication and making available controls. It is generally agreed that a stream exploits both the mechanical rights and the performing rights at the same time. [\(Section 2.2\)](#)

3. When the music industry allows others to exploit the controls of its copyrights, it either does so through direct deals or through the collective licensing system. In the latter scenario, the music community pretty much licenses as one through organisations called collecting societies (or ‘collective management organisations’ or ‘performing rights organisations’, also known as CMOs and PROs). [\(Section 2.4\)](#)

4. Each country has its own collecting societies. Usually there is a society for recording rights and a society for song rights. On the songs side, there might be one society for mechanical rights and one society for performing rights. In some countries there are multiple societies for one set of rights which compete with each other. [\(Section 2.4\)](#)

5. Traditionally collecting societies only issued licences within their home country. They would then have reciprocal agreements with other societies around the world. This meant each society could offer a licence in its home territory covering something nearing a global catalogue. Licensees would pay their local societies, which would then pass the money on to foreign societies when foreign catalogue was used. [\(Section 3.5\)](#)

6. The law usually tells us who the default owner of any one copyright is. For songs it is the songwriter. Where there are multiple writers, they co-own the copyright between

them. Default owners can transfer their rights to other parties (through assignment) or appoint another party to manage their rights (via a licence). (Section 3.1)

7. In Anglo-American markets, the songwriter usually assigns their performing rights to their collecting society and then assigns or licenses the other elements of their copyright to a music publisher. In Continental Europe, the songwriter usually assigns both the mechanical rights and the performing rights to their collecting society. (Section 3.3)

8. When a songwriter does a publishing deal, that deal will also usually grant the publisher a share of any money generated by the writer's collecting society around any of the songs that are part of the agreement. This is referred to as the 'publisher's share' and will usually be paid directly

to the publisher by the society. (Section 3.3)

9. Under the publishing deal, the publisher might then be obliged to pay a cut of its share to the writer. But this money will still usually pass through the publisher's bank account. Any advances paid to the writer can usually be recouped out of this income before the publisher makes any new payments. (Section 3.3)

10. Where a publisher controls elements of the copyright, it will either directly license those rights or allow a collecting society to license on its behalf. But either way, monies will usually flow first through the publisher, which will then pay the writer a share of that money subject to contract. Again those payments will likely be subject to the recoupment of any advances previously paid. (Section 3.3)

Section Two: The music licensing jigsaw

Streaming services need licences from 'licensing partners' in both the record industry (covering recording rights) and the music publishing sector (covering song rights).

The record industry generally does direct deals in the digital space, so the licensing partners are record labels and music distributors. On the publishing side, there is a combination of direct deals and

collective licensing, which means both publishers and collecting societies get involved.

Most streaming services want to license as many recordings and songs as possible. To do this, as they enter each new market each service must complete a jigsaw of licences, ensuring it has access to all the recordings and songs it needs to stream.

THE DIFFERENT MUSIC LICENSING JIGSAWS

The service will need to complete separate jigsaws for recordings and songs. And depending on the country, on the songs side it may also need to complete separate jigsaws for the mechanical rights and the performing rights.

Each piece of the recording rights jigsaw will be a label or a distributor. Each piece on the song rights jigsaw will be a publisher or a collecting society. How complicated each jigsaw is to complete varies from country to country.

As a general rule, the recording rights jigsaw will be pretty similar in each territory, so with each new country a service enters, it should become easier to complete that jigsaw. But with song rights, the jigsaw or jigsaws could be quite different from market to market, depending on local conventions and the decisions publishers and societies have made.

THE IMPLICATIONS OF NOT COMPLETING THE JIGSAW

And yet, it's arguably more important to fully complete the song rights jigsaw in each market than it is to complete the accompanying recording rights jigsaw, because of the potential impact on the business of any licensing jigsaw being incomplete.

Once each deal has been done with a label or a distributor, that licensing partner then pumps all

the recordings it controls into the streaming service's platform. If a deal has not been done with any one label or distributor – so the jigsaw is incomplete – the streaming service won't be able to offer that licensing partner's recordings in that market. This will make the service's offer less attractive to consumers in that country, but at least the streaming company isn't going to infringe anyone's copyrights, ie stream a recording without the permission of the copyright owner.

However, on the songs side the licensing partner simply provides a licence, not any content. The songs are contained in the recordings that the labels and distributors have already uploaded. The streaming service knows what recordings are on its platform, but doesn't actually know what songs are contained in those recordings, let alone who wrote those songs or who controls the song rights in any one country. Plus song copyrights are often co-owned, which means multiple deals may be required to ensure 100% of any one copyright is licensed.

This means it is actually quite easy for a streaming service to stream a song without the copyright owner's permission, ie to infringe copyright. And when you infringe copyright, the law says the copyright owner – or 'rights-holder' – can sue you for damages.

That said, in most countries, the owner of any songs being streamed without licence is unlikely to actually sue, because – providing the

streaming service hasn't acted in bad faith – the available damages in court are likely to be similar to any royalties that are owing. Therefore it is in the rights-holder's interest to demand the streaming service agree a licensing deal and pay the royalties that are owed to date, rather than incurring the costs of legal action.

However, this hasn't been the case in the US, where so called 'statutory damages' are often available, which can be significantly higher than the royalties actually owed. This provides an incentive on the rights-holder's side to sue the streaming service for damages rather than simply demanding it secure a licence and pay any outstanding royalties.

This is especially true where lawyers will work on a no win no fee basis and is why we have seen plenty of litigation on this issue in the US. That said, the recent Music Modernization Act seeks to end this practice and simplify, to an extent, the licensing process in America.

But either way, the simplest way to ensure it will not infringe any song copyrights is for the streaming service to fully complete the song rights jigsaw in each country.

COMPLETING THE SONG RIGHTS JIGSAWS

To complete the song rights jigsaw, the streaming service will usually start with the song right collecting societies in each country where it is launching.

What this means will depend on the

country and how collective licensing has been traditionally managed there. It could mean any of the following:

- A single deal with a single collecting society.
- Separate deals with multiple collecting societies that each represent different writers and/or publishers.
- Separate deals with a mechanical rights society and a performing rights society.

Under each of these deals the society will first and foremost provide a licence for its local market covering all the songs directly controlled by its own local membership of songwriters and/or music publishers. In addition, it will also provide a licence covering the songs controlled by any other society around the world with which it has a relevant reciprocal agreement.

In countries where there is a single society representing both mechanical rights and performing rights, which has reciprocal agreements with every other society in the world, in theory that one organisation can provide a single licence that completes the entire song rights jigsaw for that country. This means the streaming service can cover all song rights with one licensing partner and one licensing deal. However, there are complications.

Collecting societies that remove digital rights from reciprocal agreements

First, the local society may not be

able to provide a licence covering the repertoire of every other collecting society in the world.

Either because it doesn't have reciprocal agreements in place with every other society yet. Or because some of those other societies have chosen to not include digital rights within their reciprocal agreements in that territory, forcing the streaming services to instead license those rights directly from the foreign society.

A collecting society licensing users of music in countries other than its own is a relative innovation, but is becoming increasingly common in the digital space. It means that a society will negotiate a licence with a streaming service that covers multiple markets.

In countries where that multi-territory licence applies, the local society will not be involved in licensing the foreign society's repertoire. In countries where the multi-territory licence does not apply the traditional approach will usually be used, ie the local society will provide a licence through a reciprocal agreement.

Some societies have come together to provide these multi-territory licences through joint ventures, so that a service can get a single deal covering the respective repertoires of multiple societies in multiple territories. The aim is to reduce the number of deals the service needs to do.

These joint venture licensing entities

are often referred to as 'copyright hubs' and include the likes of ICE and Armonia in Europe and the Digital One Stop Shop venture in Latin America.

Publishers that remove Anglo-American digital rights from the collecting societies

Secondly, an increasing number of music publishers are licensing at least some copyright controls associated with their Anglo-American repertoires in some (though not all) countries through direct deals rather than the collective licensing system.

In these countries, the publisher will pull the mechanical rights of its Anglo-American repertoire – which, remember, the publisher directly controls – out of the collective licensing system when it comes to digital services. It means the mechanical rights in these songs will no longer be included in any collecting society licence and the streaming service must instead negotiate a deal with the publisher.

Publishers usually set up a joint venture with a collecting society or copyright hub in order to manage these direct deals. These JVs are often referred to as 'special purpose vehicles' or SPVs. They include entities like SOLAR (for Sony/ATV), DEAL (for Universal), PEDL (for Warner), ARESA (for BMG) and IMPEL (for a consortium of indies). Kobalt works in partnership with its own collecting society AMRA.

Where a publisher has pulled the mechanical rights in its Anglo-

American repertoire out of the collective licensing system, it will also often seek permission from the relevant Anglo-American collecting societies to include the accompanying performing rights in its direct deals. Remember, the society rather than the publisher owns the performing rights.

This means that, in markets where the direct deals apply, the Anglo-American society will no longer include the performing rights of that publisher's songs in any licences it provides a streaming service directly, nor in any reciprocal agreements it has with the local societies in those countries. Instead the publisher is allowed to bundle those rights into its direct deals.

However, those direct deals will be subject to the approval of any participating collecting society and the writer's share of any performing rights income said deals subsequently generates will continue to flow through the societies that control those rights. Which is one of the reasons for setting up the SPVs with a partner society. This ensures that the writer's share of performing rights income never actually passes through the publisher's bank account.

Countries without a mechanical rights collecting society (CMO)

In a small number of countries, most notably the US to date, there isn't a collecting society that represents the mechanical rights in songs. Instead anyone exploiting the mechanical rights in any one song needs a

licence directly from the music publisher – or publishers – that control that work. There may be a compulsory licence or industry-wide agreement that dictates the terms of that licence, but a licensee will still require a direct licensing relationship with every publisher.

Of course, as described above, in many markets where there is a mechanical rights society, some publishers are still licensing their Anglo-American repertoires to streaming services through direct deals. However, the streaming services can usually start with the relevant local collecting society which should be able to tell them which publishers are licensing directly in that market. The society can then provide a 'mop-up licence' that covers the mechanical rights of songs controlled by publishers not yet licensing through direct deals.

But in countries where there is no mechanical rights society, this isn't an option. However, there are usually rights agencies that help licensees identify which publishers control which songs and then manage the administration of the direct licensing process. In some ways these agencies perform a similar role to a collecting society, but they are not in themselves empowered to offer a licence to a licensee. Instead they administrate numerous direct licenses between individual music publishers and any licensee that hires their services.

In the US some of these agencies have struggled to identify the owners

of every single song copyright contained within the vast catalogues of the average streaming service, meaning some mechanical rights have gone unlicensed and some mechanical royalties have gone unpaid.

This means the streaming service is liable for copyright infringement. And because of the statutory damages explained above – which means unpaid rights-holders could make significantly more from an infringement lawsuit that simply demanding they be paid any royalties that are owed – this has resulted in plenty of litigation.

In a bid to avoid this situation, the Music Modernization Act 2018 will create a mechanical rights collecting

society in the US for the first time which will in itself be empowered to provide streaming services with a licence. Any publishers without a direct deal with a service will claim the mechanical royalties they are due for the streaming of their songs via this new society.

WHAT THE SONG RIGHTS JIGSAW MIGHT LOOK LIKE

So, as you can see, there are various complications that mean the song rights licensing jigsaw can be very different from country to country. Completing the jigsaw could be very easy or it could be very complex indeed, as illustrated in the diagrams on the following page.

Section Three: Calculating royalties

Once a streaming service has done all of its deals in any one market, it then has to go about calculating what each licensing partner is due in any one month and ensuring that those payments are made. Again, how this works is different for recordings versus songs.

THE STREAMING SERVICE DEAL

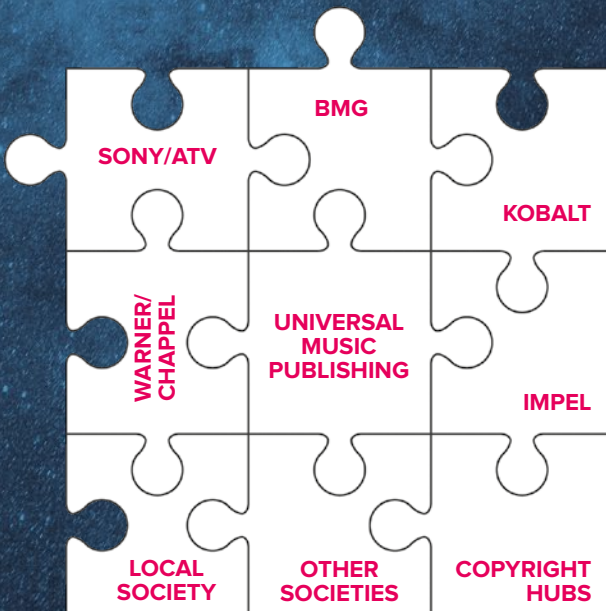
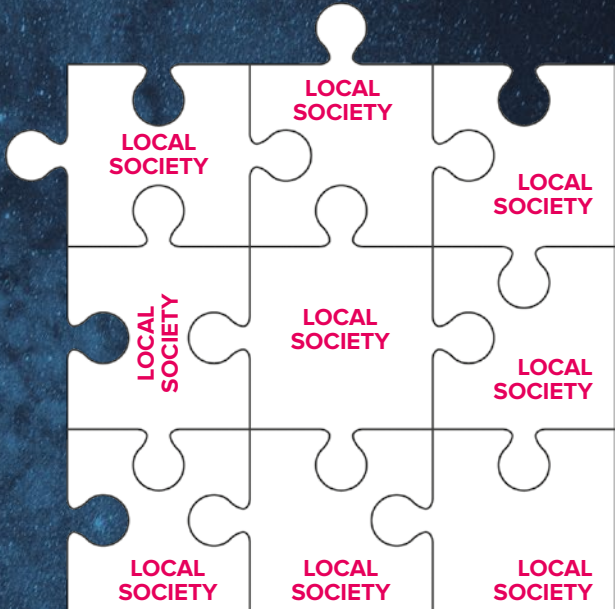
The deals done between the streaming services and the music industry are, at their core, revenue share deals based on consumption share.

So while people still frequently talk about ‘per-stream’ rates in relation to streaming income, there isn’t really any such thing. What any one label, distributor, publisher or society receives is based on what percentage of overall consumption their catalogues account for, and then their respective revenue share arrangements with each individual streaming service.

Basically it works like this. Each month the service works out what percentage of all music streamed in any one market was accounted for by any one label, distributor, publisher or

COMPLETING THE SONG LICENSING JIGSAW

Completing a licensing jigsaw could be as simple as this...



Or as complicated as this...

Though the simpler the jigsaw in any one market, the more convoluted the royalty chains for non-domestic songwriters.

society's catalogue. It then allocates the same percentage of its overall income in that market in that month to that rights-holder.

The streaming service then shares that allocation with the rights-holder according to the terms of its licensing deal. Labels and distributors will usually see 50-60% of their allocation. Publishers and societies 10-15%. This process will probably be done separately for each of the service's subscription types, eg free, premium, mobile bundle, family plan, student discount, etc.

Section 6.4 of the 'Digital Dollar' book explains in much more detail how these deals work, and also talks through the other key elements of the streaming deals like minimum guarantees, advances, equity and fees. For the purposes of this guide, we are less concerned with how royalties are calculated, and more interested in who is doing those calculations, who the service actually pays, and then what happens to that money as it flows through to the artist and writer.

CALCULATING ROYALTIES EACH MONTH

Once the deals are in place, the streaming service generally assumes that whichever label or distributor uploaded a recording onto its server must represent the rights in that sound recording. Therefore, whenever that recording is streamed, that label or distributor should be paid, according to the monthly consumption share metric and the terms of their specific deal.

But calculating what song royalties are due to whom is more complicated, because the service doesn't know what songs are contained within the recordings its users have been streaming.

Although some services now ask labels to provide songwriter information alongside the recordings they upload, that doesn't mean they know what specific song copyright has been exploited, nor who controls that copyright in any one market. It does know the unique ISRC attached to the recording, but it doesn't know the unique ISWC of the song contained in that recording. And there is no central publicly accessible database that links ISRCs and ISWCs.

Because of these limitations, the services usually outsource the calculation of song royalties each month to their licensing partners, ie the societies, copyright hubs and music publishers.

Each licensing partner is provided with a report of all the tracks streamed in each country. The licensing partner must then process this report and identify which tracks contain songs it controls in that market. Because of co-ownership of song rights, the licensing partner may only control a slice of any one song copyright, and therefore also needs to declare what percentage of each song it controls in that country.

With billions of streams being serviced each month, this is a significant piece of work. Some societies have invested in building

technology that automates this process. Others – and those publishers which license song rights direct – choose to outsource this work, either to other societies, or to the copyright hubs, or to standalone businesses that have set themselves as royalty processing providers.

There is a logic to publishers and societies pooling this work, rather than every single licensing partner having to process every streaming service's entire monthly consumption report.

Once this royalty processing work has been done, each licensing partner reports back to the streaming service what tracks contain songs its controls. The service can then calculate what percentage of overall consumption was linked to each licensing partner's repertoire, and then calculate what each partner is due based on the metric described above.

THE PROBLEM OF DATA CLASH

However, problems routinely occur in this process. Each licensing partner has a record of what songs (and what percentage of what songs) it controls in each market. Meanwhile each royalty processing provider has

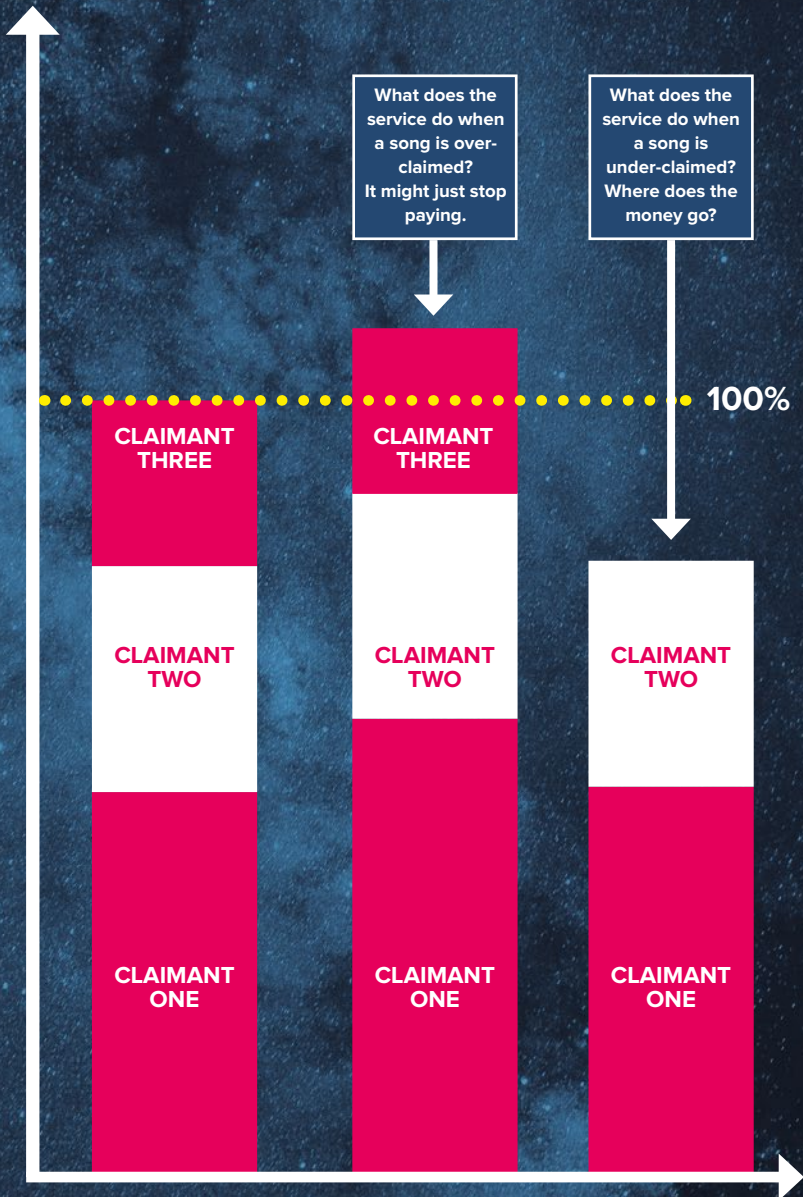
a record of what song is contained in each recording (ie what ISWC is linked to in each ISRC).

However, the databases of different licensing partners and royalty processing providers may not agree, which means some songs will be over or under claimed for. Which is to say that once all of a service's licensing partners have put in their claims, they might find that 120% of one song has been claimed, while for another claims have been made for only 80%.

Songs that are over-claimed are said to be 'in dispute' and as a general rule the streaming service stops paying out any royalties on that work until the dispute has been resolved. It's not known how many works are currently in dispute in how many markets – nor how many royalties are on hold as a result – but the total number worldwide could be significant.

Where there is no dispute, the service pays each society, copyright hub and publisher what they are due. Using the reports they or their royalty processing provider created, the licensing partner can then work out how that money needs to be shared among songwriters and publishers.

HOW BAD DATA STOPS WRITERS GETTING PAID



Section Four: Royalty chains

Once a service has worked out who is owed what, it pays the licensing partner with which it has a direct relationship, which on the recordings side will be a label or a distributor, and on the songs side will be a publisher, collecting society, copyright hub or rights agency.

This entity might have a direct relationship with the artist or songwriter. In which case it would pass on what is owed to said artist or songwriter under the terms of any label, distribution or publishing contract or – in the case of a collecting society – according to its own rules and regulations. In this scenario we have a single-link royalty chain, ie there is only one entity between the streaming service and the artist or writer.

However, for various reasons, there are often additional links in the chain, which is to say other entities through which money must pass before it reaches the artist or writer. Each of these extra links in the chain will likely result in additional deductions and delays.

SINGLE-LINK ROYALTY CHAINS

When it comes to song royalties, there are two main circumstances where there would be a single link in the chain between the streaming service and the writer.

First, where the writer's collecting society licenses the service directly. This will often be the case when music is streamed in the writer's home country. And, as mentioned above, some societies now license their repertoires directly to streaming services in multiple countries, ie not just their home markets. Where this applies, some royalties would flow down a single link chain.



Secondly, where a publisher has a direct relationship with the streaming service, again some royalties may flow down a single link chain. Though, as we will see below, most direct deals are not quite this simple.



MULTI-LINK ROYALTY CHAINS

Multi-link royalty chains are more common. First, where collecting societies are involved, there may be a copyright hub or another collecting society in the chain.

So, where the writer's home society is licensing services directly, it might actually be providing that licence via a copyright hub, which creates an extra link as follows.



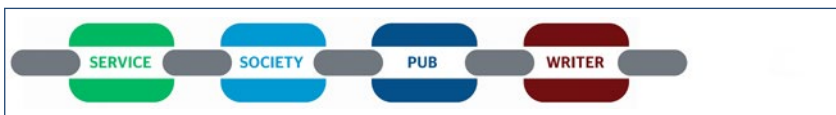
Plus the writer's home society won't be directly licensing services in all markets and in those other territories the local society will get involved. Which means the local society will license the service via its reciprocal agreement with the writer's home society. That local society will then claim and collect any royalties due, and pass the money on.



We should also remember that, even where collective licensing is involved, some of the money might still pass through the publisher before being paid to the writer.

With Anglo-American repertoire this would apply to all society-collected mechanical royalties. But as noted above, depending on the writer's publishing contract, the writer might also be due a cut of the publisher's share of any other income collected by a society.

Where this occurs, the society still usually pays the publisher its share, but said publisher must then pay some of that money to the writer, subject to contract. In both these scenarios the following chain would apply...



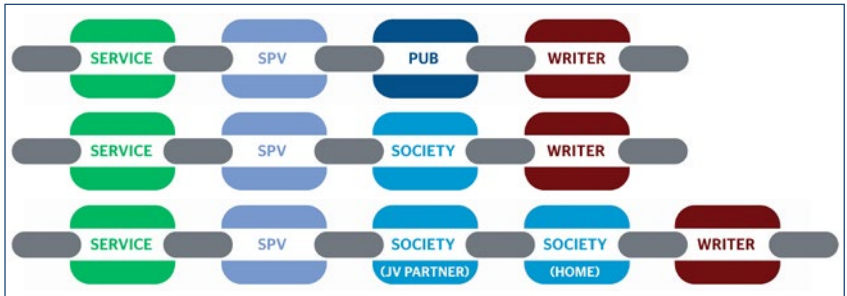
Meanwhile, where a publisher is licensing directly rather than via the collective licensing system, there is still likely to be an extra link in the chain. This may be because there is a rights agency sitting between the service and the publisher

doing all the administration, as might happen with mechanical royalties in the US. In that case the money would flow as follows...

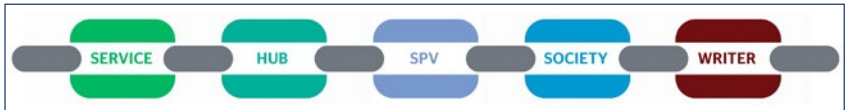


Meanwhile in Europe, as explained above, direct licensing is usually managed via entities called SPVs, which are joint ventures between the publisher doing the direct licensing and one or more of the collecting societies. This adds at least one, and possibly two, extra links into the chain.

Royalties paid under these kinds of licences may variously flow as follows...

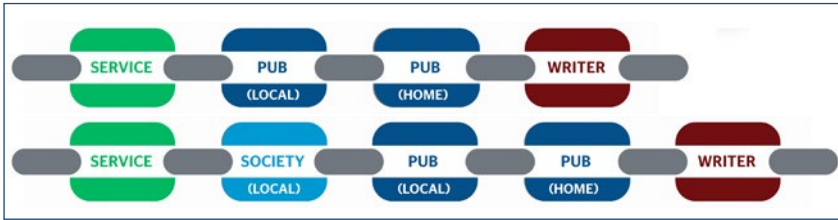


And there may also be copyright hubs involved in this process. For example...

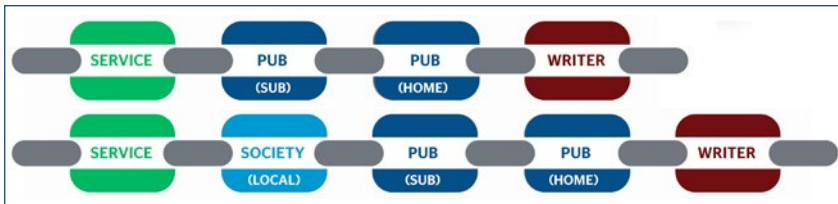


As an added complication, we have to factor in local subsidiaries and sub-publishers. Which is to say, as song royalties pass along the chain there may be local subsidiaries of the writer's own publisher or other locally-based sub-publishers involved in the process.

So where the writer has a global deal with a global music publisher, in each country, royalties might be paid to that publisher's local subsidiary – either directly or via a society, hub or other agency – and that local division will then pass the money onto the home division, which will in turn pay the writer. So one of the following royalty chains might apply...



Where the writer has a global deal with an independent publisher, that publisher might rely on another publisher – usually called a ‘sub-publisher’ – in some markets. Where this applies, monies will pass through the sub-publisher first before being paid to the home publisher and onto the writer. So one of the following royalty chains might apply...



It is also worth noting that different combinations of these various royalty chains are also possible, which could add additional links into any one chain.

DEDUCTIONS AND DELAYS

The reason it’s important for writers and managers to understand that their streaming income may be passing down different royalty chains is because different deductions and delays will occur on each different chain. And it’s crucial that writers and their managers appreciate the impact this might have on how much they ultimately receive and when.

When it comes to any deductions made as money passes through the local divisions of a publisher or any sub-publishers involved in the process, there needs to be clarity in the publishing contract as to what this means for the final sum the writer receives.

Are the local divisions or sub-publishers deducting money as royalties pass through their bank account? And, assuming they are, will the percentage of monies due to the writer under contract be calculated based on the ‘at-source’ income, ie the sum of money the streaming service handed over to the first link in the chain? Or will it be applied to the sum received by the home publisher (or home division of the publisher)?

Depending on the wording of the publishing contract, these deductions might

not affect the writer, or they might significantly reduce what monies the writer is ultimately paid

Deductions made by any collecting societies that royalties pass through as they move along the chain can't usually be avoided.

Of course, most societies are not-for-profit organisations owned by their members and would argue that any deductions they make simply cover their administrative costs. And remember, any society with a direct relationship with a streaming service has to process a lot of data to calculate what everyone is due – or hire a third party to do this work for them – all of which increases those costs.

However, the fees charged by different societies vary considerably and it's not always clear to the writer at the end of the royalty chain what deductions have been made where. Which means it can be hard for an individual writer to know where the inefficiencies occur and – even if they knew – it can be hard to cut the inefficient society out of the chain. This is an issue that the songwriter community needs to better understand and then discuss.

Considerable delays can also occur when monies pass through foreign societies. The reciprocal agreement between any two societies will set out how and when monies will be exchanged, but this exchange of money can be as infrequent as once a year.

Add in extra delays at the local society and the writer's own society as data and royalties are processed, and it could take eighteen months to two years for monies to move through the system.

Again it can be hard for the writer to avoid these delays, other than directly joining the foreign society as a writer member so that they no longer rely on the reciprocal agreement.

VARYING ROYALTY CHAINS

The other important thing to understand is that each songwriter will likely be at the end of multiple royalty chains. Which is to say some of the money due to any one song will flow down one chain, some money will go down another, some money down a third chain, and so on.

For starters, songs are routinely co-written and therefore co-owned. Different co-writers may be signed to different publishers and be members of different societies, which would mean each writer's share of the money would flow down different chains. Which in turn would mean each co-writer would be affected differently by the deductions and delays that occur.

Meanwhile multiple royalty chains may also apply for a single songwriter in relation to a single song being streamed in a single country by a single streaming service.

This happens for two main reasons.

Mechanical rights v performing rights

As mentioned above, a stream exploits both the mechanical rights and the performing rights of the copyright. And – for legacy reasons – the two sides of the song copyright may be licensed and managed separately and differently.

The impact of this split varies from country to country. In some markets the streaming service will license mechanical rights and performing rights through separate deals. The terms of these different deals will therefore dictate what monies are allocated to each element of the copyright and what royalty chains apply.

In other countries the streaming service has licences (whether from a society, a publisher or a hub) that cover both mechanical rights and performing rights, so will make a single payment to its licensing partner that covers both elements of the copyright.

However, whenever that happens, the licensing partner (or possibly another entity in the royalty chain) will then split that payment into two, allocating some of the money to mechanical rights and some of the money to performing rights. The exact nature of that split varies from country to country.

For example, in France it is 75% mechanical rights, 25% performing rights (albeit depending on the nature of the stream); in Germany it is 33% mechanical rights, 66% performing rights; in the UK it is 50/50.

This isn't mere semantics. With Anglo-American repertoire, anything allocated to mechanical rights will be paid in full to the publisher (either directly by the streaming service or via a collecting society). The publisher will then share that income with the writer subject to contract, and will usually be allowed to recoup any advances from that money.

Anything allocated to performing rights of Anglo-American repertoire will flow through a society which will pay at least 50% of the money directly to the writer.

In Continental Europe, generally both mechanical rights and performing rights income flows through a society which will pay some of that money directly to the writer. Though how the society splits the money between publisher and writer may differ.

So for example, in France, with performing rights income 66% is usually paid directly to the writer, whereas with mechanical rights income the writer's share is 50%.

Publisher's Share v Writer's Share

Where societies pay both writers and publishers a share of the income they collect, it is common for the royalty chain for the writer to be different than the royalty chain for the publisher, even though they are being paid for streams of the same song on the same service in the same country.

This is because publishers tend to join multiple societies around the world – either directly or via sub-publishers – whereas writers usually join one society and allow it to represent their rights globally, often relying on reciprocal agreements.

So, for example, where the service pays a local society, the publisher may be a member of said society and therefore will receive their share directly from it. Or they may have a sub-publisher in that country, who would be paid directly by the society and then pass the money – minus its cut – on to the main publisher.

Meanwhile, the writer will probably have appointed their local society to represent their rights globally. So the local society would pay the writer's home society via the two organisations' reciprocal agreement.

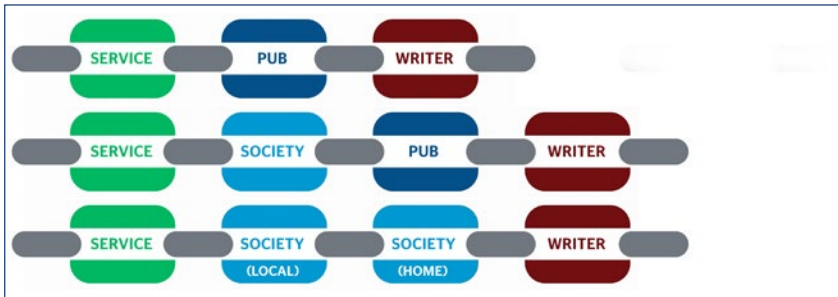
Because the writer and the publisher are relying on different royalty chains, they will be subject to different delays and deductions. And these differences can be significant, because money is often exchanged under reciprocal agreements once a year, and both the local society and the writer's society will charge a commission.

The impact of these variations

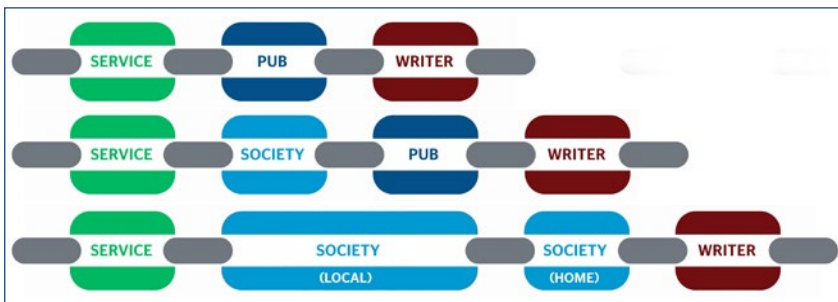
It's because of these variations that multiple royalty chains may apply for a single songwriter in relation to a single song being streamed in a single country by a single streaming service. Which is to say, when a song is streamed, the royalty due on that stream (which will be fractions of a penny) will be split and flow down multiple chains.

For an Anglo-American writer, there will likely be three chains per stream. The money allocated to the mechanical rights will flow down one chain. The writer's share of money allocated to the performing rights will flow down another chain. And the writer's cut of the publisher's share of performing rights income will flow down a third chain.

So a single royalty for a single stream of a single song might be split into three and flow through to the writer via each of these chains...



And remember, the delays that occur in each of chain will likely be different. If we factor delays into the mix, the chains might be more like this..



Publishers may also sit on the money for longer, especially if there are local divisions or sub-publishers in the mix, so it can sometimes be hard to predict which chains incur the most delays, and when each payment will come in.

And, of course, royalty chains also vary from country to country. So not only is a writer likely sitting at the end of three chains for each song, those chains could be different for each market.

Section Five: Recommendations

As explained at the outset of this guide, the various complexities and inefficiencies in the way streaming royalties flow through the system is likely impacting on when and how much artists and writers earn whenever their music is streamed.

There are a number of things that individual songwriters, managers and/or accountants can be doing right now to reduce the negative impact of the royalty chains on any one writer's income.

Beyond those practical steps, there are then a number of things that could be done at an industry level to reduce negative impact across the board, and writers and managers should be demanding that the societies and publishers prioritise these tasks. Some societies and publishers are already doing some of these things, and should be celebrated for it.

In this section we outline the practical steps writers and their managers can take, and set out an agenda for what the wider music publishing industry should be doing next.

PRACTICAL STEPS FOR SONGWRITERS AND THEIR MANAGERS

1. Map your royalty chains

A songwriter's manager and/or accountant should identify what royalty chains are being employed

whenever their client's songs are being streamed in each market, remembering that multiple royalty chains will likely apply to a single stream of a single song.

As a starting point, managers need to request this information from any societies or publishers that their writers currently work with. There may initially be push-back from some of a writer's business partners, but songwriters have a right to know and understand what chains their royalties are flowing down, and providing this information should be a basic transparency commitment for any society or publisher.

Once the royalty chains have been identified, the manager then needs to work out what deductions and delays are occurring at each link in the chain. This may prove to be a more tricky task. Some of the information – such as fees deducted by European societies – will be public domain, albeit not necessarily in a particularly user-friendly format. Other information may be stated in contracts or royalty reports. Other information still may require more detective work.

Where money is passing through publishers – and especially multiple sub-publishers or multiple divisions of a global publisher – the manager should be clear on whether that impacts on the songwriter's ultimate share of income. Which is to say, whether the writer's share is calculated based on 'at source'

income or not. If it is, they should ask for clarity as to what the publisher actually means by 'at source'.

Where money is passing through societies it will be harder for a writer to avoid the deductions and delays that occur, although choice of society and choice of publisher might have an impact. Certainly managers should be aware of what those deductions and delays might be, both under their clients' current deals and memberships, and especially when considering new publishing deals or moving to a new society.

2. Check the databases to avoid data clash

Managers and accountants should also seek to ensure that there are no current data clashes in relation to their client's work which could be delaying or stopping the payment of streaming royalties. These data clashes could be occurring in single or multiple territories.

As a starting point, managers should check the databases of as many collecting societies as possible, confirming that any songs the writer wrote or co-wrote are correctly attributed. This will be easy to do with the writer's own society, but other societies may be the first link in any one royalty chain, or could be making a claim against the song on behalf of another co-writer somewhere else in the world. So the more extensive this database check can be the better.

Because every collecting society traditionally had its own database, there are a lot of databases to check

and each society has its own rules as to who has access to its system. Some societies are now connecting and/or pooling their databases – with mixed success – but there are still well over 100 databases that really need to be checked in some way.

The global collecting society body CISAC has long had a system that attempts to make it easier for people to access multiple society databases called CISnet. Traditionally this was only available to other societies, however there have recently been moves to extend access to publishers and writers, and managers should seek access to this system to help with the data checking process.

That said, given the large number of databases, that is a lot of work. And because databases are constantly changing, checking for data clash in this way is not a one-time-only project. Really this should be a task undertaken by the music publisher – and, indeed, the good publishers are actively working in this space. However, bigger publishers have such large catalogues, they may struggle to stay on top of each data conflict as it occurs. Meanwhile smaller publishers may be relying on a sub-publisher or sub-publishers to stay on top of data clashes in other markets.

But it is nevertheless reasonable to expect a publisher to be doing these checks. So, while a manager or accountant might want to undertake this data checking themselves, to be absolutely certain everything is in order, managers should be also asking their writer's publisher

what work they are doing and what systems they have in place to ensure bad data isn't stopping payment.

3. Compare income from different royalty chains to identify disparities

As noted above, different royalty chains will often apply to the same song. So mechanical and performing royalties, and/or a writer's share and a publisher's share, may go down different chains. Also, money owed to co-writers on the same song will often go down different chains too depending on who their publisher or collecting society is.

In many ways single payments going down different chains in this way is inefficient, but it also provides some checks and balances for those at the end of the chain. So that managers and accountants can compare the monies their clients are receiving at the end of each chain for the same work and see if there are any disparities.

For example, if a writer is receiving mechanical rights income from their publisher and performing rights income from their society, and they are in a market where the mechanical rights/performing rights split is 50/50, they can see if they are receiving more or less the same amount of royalties for the two sides of the copyright. And, if not, they can investigate why not.

Though it's important to note that comparisons of this kind will require some nuance, because the length of time it takes for money to pass

along one royalty chain can be much longer than another. So, for example, mechanical rights income might show within six months, while performing rights money on the same streams might take eighteen months.

Adding to this challenge, it is not always easy to identify what time period any one set of royalties relates to. Some publishers and some societies are good at identifying what time periods specific royalties came from some of the time. But managers and accountants should put pressure on both publishers and societies to provide this information with all streaming royalties being reported, and then regularly check that there aren't any disparities between connected chains.

4. Undertake a complete data and royalty chain audit

Where writers and managers suspect that they might be losing significant sums to the system – maybe as a result of comparing the income coming through the different chains – they might wish to do a complete royalty chain audit, identifying every possible royalty chain, and then scrutinising each link in that chain regarding deductions, delays and any possible data clash.

This process might also identify incomplete or missing royalty chains in some countries, which might be the result of bad data, or a streaming service having yet to complete its licensing jigsaw.

Successfully completing such a task arguably requires legal, accountancy

and database expertise, which will likely require forming a specialist audit team.

That team may also have to assess what audit rights the songwriter has under any publishing contracts. And also what demands for transparency and information they can make of any collecting societies, either under each society's own rules, or according to other regulations that govern relevant societies. Those other regulations maybe in national copyright law, or European law, or the code of conduct of CISAC.

This, of course, is likely to be an expensive endeavour, and so is most viable for songwriters with more lucrative catalogues who are likely losing significant sums to the system.

This is a common problem in the music industry, in that a majority of songwriters probably can't afford to do a full audit, even though those are the songwriters for whom monies lost to the system can be the difference between making a viable living from their music or not.

Meanwhile, where superstar songwriters do audit and find systemic problems, they are often prevented from sharing that information with the wider music community because of non-disclosure agreements and confidentiality clauses.

Though if a template audit system specifically to tackle this challenge was created, which could then be used by many songwriters, there may

be economies of scale that could bring the costs of such activity down.

Alternatively, the songwriter community might want to fund a test audit with a middle-level songwriter on the condition that any issues uncovered would be shared with the wider community. Even then confidentiality clauses in publishing contracts might prevent some key issues from being made public.

CHANGES TO INDUSTRY PRACTICE

1. More transparency

Everyone agrees that there needs to be more transparency in the digital music market, but who needs to be more transparent about what? The previously published MMF Transparency Index sets out the 20 pieces of information artists and songwriters need from their business partners to fully understand their own streaming businesses. Much of this Index applies to publishers and societies as much as it does to labels and distributors.

However, on the songs side more information is required. We have advised above that managers ask any publishers and societies their writers work with to identify what royalty chains are being employed. Really this information should be available by default.

To that end, the songwriter and management communities should urge societies and publishers to start sharing royalty chain information as a matter of course. This need not be

as onerous a task as it might sound, especially for societies, because the same set of chains will apply to big groups of writers, usually based on who their publishers are. So it's not a case of the societies having to create a personal set of royalty chains for every single member.

As well as outlining what royalty chains are in play, societies and publishers should also be telling writers what deductions and delays are occurring at each link in each chain. Writers shouldn't have to undertake extensive detective work to find out what their own business partners are doing with their own money.

Publishers and societies may cite confidentiality clauses in other contracts as a reason for not providing this information, or argue that doing so is too labour intensive, especially for works that generate nominal income. However, transparency of this kind should be standard practice for anyone in the business of rights administration, and again – especially with societies – the same sets of royalty chains, and therefore the same deductions and delays, will likely apply to large groups of writers.

Managers should also ask societies to ensure that any transparency commitments they have made – or are obliged to comply with under law – apply to hubs and royalty processing providers that they take part in or employ. Both hubs and the central pooling of royalty processing can make the digital licensing and

royalty payment process more accurate and more efficient over all, but those initiatives shouldn't result in less transparency for writers.

2. Easier access to the databases

Given just how big an impact a database on the other side of the world can have on a songwriter's income, the music publishing sector needs to make it easier for writers and their managers and accountants to check all the databases that list their works.

To that end, extending access to CISnet to all stakeholders should be a priority, and efforts should be made to ensure it is as easy as possible for writers, managers and accountants to check and update data relating to works they created, own and/or represent.

3. Introduce data clash alerts

In addition to making it easier to access song right databases, societies and publishers should be urged to be more proactive in alerting writers and their managers to any current data clashes that are delaying or stopping payment.

Regularly checking every database for clashes is a big task – whether undertaken by publisher, manager and/or accountant – but really the system should be routinely spotting and alerting all stakeholders to all clashes. After all, the more stakeholders alerted to a data clash, the quicker any dispute over ownership can be addressed, which should be to everyone's benefit.

The quality of collecting society data and databases varies hugely around the world. Though many societies are regularly evolving their platforms. Managers should urge societies to make data clash alerts a top priority and champion those societies that deliver.

4. More global licensing

Beyond trying to reduce the negative impact of each individual royalty chain, another aim for the music community at large should be to reduce the total number of chains being employed and the number of links in each chain.

The simplest way to achieve this is to increase the number of global licensing deals in the streaming domain. As explained above, both societies and publishers do now license streaming services on a multi-territory basis. Where that happens, monies flow from the service to the licensing partner (possibly via an SPV and/or hub) to the writer, without additional publishers and societies getting involved. This makes the process simpler and should mean fewer deductions and delays as the money flows through the system.

Although multi-territory licensing is now more common, in most cases deals of this kind will still only apply in some countries with some services, ie not on a global basis with all services. Which is to say, many countries will still sit outside those arrangements.

That might be because a local society or publisher is required to access

other local revenue and it is hard to separate digital income from other income. In a small number of cases a country's copyright law actually grants the local society a monopoly. And there may be other commercial or political reasons as to why a country hasn't been included in a multi-territory deal.

But as a basic rule, the more global licensing that can be achieved the better. So writers and managers should call on their societies and publishers to seek such arrangements, and to better explain where and why local partners are still involved in some countries.

5. Faster payments

While on the recordings side of the business improvements could still be made by some labels and distributors with regard to the speed with which royalties are processed and paid to artists, as a general rule money flows through the system much faster with recordings compared to songs.

As mentioned above, the time it takes for money to move down different royalty chains can vary hugely, meaning money for a single stream could arrive in multiple payments over a period of years. This is clearly not acceptable.

It is true that – because societies and publishers must process reports from the streaming services and then claim the royalties they are due – they are never going to be able to process the money as fast as labels and distributors. But the process should be taking months, not years.

Where the significant delays still occur, it is partly because of overly complex royalty chains which more global licensing can address. But it is also partly down to the fact that, in music publishing, long delays are too readily accepted as the norm, especially where reciprocal agreements between societies are involved. It is worth remembering, of course, that these delays frequently affect writers more than publishers.

To that end, writers and managers should be demanding that their publishers and societies make the speeding up of royalty payments, especially of streaming income, a top priority, so that nine months is the absolute maximum time anyone has to wait to be paid.

Where more timely payments have already been achieved, these policies and practices should be extended across the sector. And if any publishers or societies claim that the nine month cap is unachievable, writers and managers should question whether those organisations should even be in the business of rights administration.

6. No black box and market share distribution

For various reasons, each year a portion of streaming income due to publishers and songwriters is unclaimed or unallocated. This is common with all revenue streams on the songs side of the business, and that unallocated money has often colloquially been referred to as ‘black box’.

For some revenue streams, black box is inevitable, because many licensees of music – such as pubs, clubs and cafes – will never realistically submit accurate lists of music usage, so the societies do not know who is actually due the money paid into the system by those users. Different societies have different policies as to how that money should be distributed, though splitting black box up based on market share is quite common.

In theory for streaming there shouldn't be a black box, because the streaming services can provide very accurate reporting of what music was used, albeit recordings rather than songs data. But even if the distribution of streaming income is never going to be 100% accurate – because of the various complexities discussed above – writers and managers should make a number of demands in this domain.

First, that publishers and societies are entirely transparent about what streaming monies have not been claimed or allocated, where that money sits, and what is happening to it. Secondly, that everything is done to ensure that unallocated monies are kept to the absolute minimum.

Thirdly, that unallocated monies are not distributed on a market share basis. Because it is almost certainly the case that unallocated monies relate to streams of songs created and controlled by more grass roots writers and publishers, who never benefit when market share distributions are employed. And market share distribution can

also mean that it is in the interest of the bigger rights owners – who are best positioned to fix the problems outlined in this guide – to actually not address these issues.

The songwriting community should be rigorously consulted regarding what should happen to this income.

One solution would be to allow these monies to be distributed to grass roots music makers through the talent support initiatives many societies already operate. Some of the money could also be used to fund enhancements to databases and royalty processing systems that would allow the other changes proposed in this guide to be implemented.

7. Fewer databases

Finally, addressing the wider music rights data problem would go a long way to helping reduce inefficiencies in the system, and especially the impact of data clash.

The music rights industry, and especially the publishing sector, has long discussed the need for a central, publicly accessible, global database of music rights ownership information, which would state which song (by its ISWC) is contained in which recording (by its ISRC), who wrote the song, who performed on the track, and who controls all the rights in each country.

The music publishers, of course, attempted to build something that could have evolved into that – the Global Repertoire Database – but

the project collapsed for political and funding reasons.

There was then a lot of debate a few years ago about how such a database might be built – possibly by employing the blockchain – and since then various societies and start-ups have been working on music rights data solutions. It remains to be seen if any succeed and whether multiple solutions are able to co-exist and communicate with each other.

Although not a panacea, such a central, publicly accessible, global database of music rights ownership information would nevertheless directly address some of the issues raised in this guide, and also facilitate and empower innovators in the market seeking to tackle some of the other challenges.

It is possibly unrealistic to hope that one day there will be a single database, but drastically reducing the total number of databases should be a top priority for the wider music community.

To that end songwriters and their managers should continue to encourage their business partners – labels, distributors, publishers and collecting societies – to do everything they can to support viable data initiatives.

And everyone in the wider music community should make it their business to ensure that, as new songs are written, as good a data as possible is put into the system as soon as is possible.

The effective use of data standards like ISWC varies across the industry, and writers should be putting pressure on all publishers and societies to up their game in this regard, while also doing their bit by ensuring that they – or their representatives – agree ownership splits on new works and register them with the system as soon as possible.

FUTURE DEBATE

Finally, there probably needs to be

a frank conversation among the songwriting community on many of the issues raised in this guide and about what can be done to tackle these things on an industry wide basis, through greater transparency and the identifying and championing of best practice.

One easy thing we can do is ask the questions on the following page of all our business partners and use the responses to drive positive change.

DEALS

- What royalty chains are your publisher and society currently employing?
- Would another publisher or society have more efficient royalty chains?
- How could your publisher or society change their licensing approach to ensure more efficient royalty chains?

DATA

- Are all of your songs correctly recorded in every society database?
- How can you easily check?
- Are any data clashes currently stopping you from getting paid?
- Why aren't you alerted to these data clashes?

DELAYS

- How long does it take for money to flow down your royalty chains?
- Why are there delays along the way?
- How can we cut the delays?

DEDUCTIONS

- How much money is deducted at each link in the royalty chain?
- What fees are the societies charging?
- What cuts are your publisher and their sub-publishers taking?
- How can we reduce the deductions?

DEBATE

- How can we reduce the number of databases?
- How can we reduce the number of royalty chains?
- How can we reduce the number of links in each chain?
- What is the most efficient approach to licensing streaming services?

The **\$ong Royalties Guide** explains the complexities and issues with the way streaming services pay songwriters. It has been produced by music consultancy **CMU Insights** for the **Music Managers Forum**.



ABOUT THE MUSIC MANAGERS FORUM | themmf.net

MMF is the world's largest professional community of music managers in the world. Since our inception in 1992 we have worked hard to educate, inform and represent our managers as well as offering a network through which managers can share experiences, opportunities and information.

We are a community of over 600 managers based in the UK with global businesses and a wider network of over 3000 managers globally. We engage, advise and lobby industry associates and provide a professional voice for wider industry issues relevant to managers.

The MMF runs training programmes, courses and events designed to educate and inform artist managers as well as regular seminars, open meetings, roundtables, discounts, workshops and the Artist & Manager Awards.



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