

# Tech Tip: Mumbo Jumbo, Types of Songwriter Agreements

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by Jeffrey and Todd Brabec

When a songwriter enters into a relationship with a music publisher, there are a number of distinct type of agreements which might be signed. The following article is an overview of those primary contracts.

Individual Song And Exclusive Songwriter Agreements: The most common songwriter-publisher agreements are the individual song agreement and the exclusive agreement.

Under the individual song agreement, a writer transfers the copyright to one composition or a selected number of identified compositions to a publisher and, in return, receives a portion of the income earned from uses of that composition or compositions. Because the individual song contract applies only to the song or songs specifically mentioned in the agreement, the writer can go to a number of different publishers with other songs and give each one only those songs that it is really interested in promoting.

Under the exclusive agreement, the songwriter agrees to assign all compositions written during a specified term (for example, 2 years from January 1 or 1 year with four options), with the guarantee of a share of the income generated and usually a proviso for weekly or monthly payments. All weekly or monthly payments made to the writer are treated as advances, recoupable from the future royalties of the writer. For example, if a writer is being paid \$600 per week in advances, \$31,200 will have been advanced in the first contract year. These monies will be deducted from any royalties that become due from record sales, downloads, sheet music, commercials, home video, television and motion picture synchronization fees, as well as from any other source of income that the publisher controls.

One of the values of such an exclusive relationship with a publisher is that the writer is guaranteed a steady income, much like a salary, to meet the normal, day-to-day financial needs and living expenses while pursuing a career. In addition, since monies from record sales and performances take from 7 months to more than 2 years to reach the writer, the weekly or monthly advance payments (sometimes referred to as a "writer's draw") can lend a great deal of financial and emotional security while the writer is waiting for royalties to be collected and processed.

**Co-Publishing And Participation Agreements:** Many writers are able to negotiate co-publishing or participation agreements with their music publishers. Under the co-publishing agreement, the songwriter co-owns the copyright in his or her songs (usually through a wholly owned company) and receives a portion of the publisher's share of income (usually 50%) in addition to the songwriter's share. Under the participation agreement, the writer shares in the publisher's income similar to the co-publishing arrangement but does not become a co-owner of the copyright.

Publishers also receive rights in compositions through the following types of agreements. None of these actually transfers copyright ownership; instead, they transfer the rights to control and administer the compositions for a specified period of time.

**Administration Agreements:** Under an administration agreement, the publisher receives the right to administer a composition or group of compositions (i.e., licensing the use of songs in recordings, tapes, CDs, television series, motion pictures, DVDs, commercials and video productions and collect royalties from all music users) for a specified period of time (e.g., 3 years, 5 years, etc.). In return for its services, the publisher usually receives an "administration fee" of from 15% to 25% of all income earned during the term of the agreement.

**Foreign Subpublishing Agreements:** The foreign subpublishing agreement is similar to an administration agreement. The only difference is that the publisher is contracting with another publisher in a foreign country to represent its catalogue in that territory. For example, if a U.S. publisher wants to have a publisher in England represent its catalog in the United Kingdom, or if a publisher in France wants its catalog represented in the United States by an American publisher, the agreement is referred to as a subpublishing agreement. As with the administration agreement, representation is limited to a specified duration (usually not less than 3 years), and the fees retained by the foreign subpublisher for its services are negotiable within certain limits.

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