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MUSIC PUBLISHING

THIS CHAPTER IS AN INTRODUCTION TO THE FUNCTION OF THE MUSIC PUBLISHER. IT DISCUSSES THE VARIOUS SOURCES OF PUBLISHING INCOME, HOW THAT INCOME IS COLLECTED AND HOW ROYALTIES ARE CALCULATED AND DISTRIBUTED.

Music publishing is one of the oldest branches of the music industry and is central to it. Composers, lyricists, librettists, translators and arrangers (for convenience, we will generally use the term ‘writer’) all create works that need to be administered if they are to generate money. Most writers are too busy, or have no inclination, or do not have the administrative infrastructure, to get involved in the day-to-day business of keeping track of all the ways their works are used by others, so they do deals with music publishers to do it for them in return for the publisher retaining a percentage of what they collect. This is good for the writer because the publisher has a strong commercial incentive to do the best job possible. Like any relationship, both parties have to play their part; the publisher has to be as efficient and active as possible in exploiting and protecting the works, while the writer has to deliver works as and when promised and generally be an active partner in exploiting his or her own works.

You will hear the word ‘exploit’ a lot in this business. Despite conjuring up images of grimy-faced waifs in Dickensian sweatshops, it is actually just a grab-bag word to cover the multitude of ways music and lyrics can generate income for those who own and control the copyrights. Just because publishers exploit music does not mean they exploit composers (though, as in any business, there are good and bad examples of the species, which is why writers need good legal and business advisers). Music publishing is a business. Any writer who forgets this is likely to regret the memory lapse.

WHAT A PUBLISHER DOES

The principal functions of music publishing may be summarised as follows.

ADMINISTRATION & COLLECTION

- Collecting fees and royalties earned by the commissioning and exploitation of music.

- Doing all the administration involved in registering, maintaining and protecting the copyrights.
- Participating in industry associations such as APRA, AMCOS and AMPAL through which they negotiate rates for the use of their works with users, e.g. ARIA, Free TV Australia, CRA and websites.
- Protecting the work from demeaning or unauthorised uses.

LICENSING

- Persuading other users of music, such as film and television producers, advertisers and game developers either to commission new works from its writers or use its existing works, and securing synchronisation licences for such use.
- Publishing sheet music or licensing others to publish it.
- Licensing the use of music in special products or premiums.

CREATIVE

- Persuading artists and record companies to record the copyright material that it owns or controls.
- Promoting the reputation of writers so that the market for their work is enhanced.
- Pitching songs to record companies, film and television production companies and advertising agencies.
- Helping writers get record deals and funding demos.
- Developing writers as recording artists (or vice versa!) as the role of record labels in this area diminishes.
- Helping writer/artists get good management.
- Giving general career advice.

Some writers elect to administer their own publishing. But given the list above, it's no wonder that most prefer to have a publishing company carry out those functions. Although it is not something they necessarily see as their job, publishers have an important secondary role in that their royalty advances are also an important source of non-bank finance in the industry.

Publishers come in an increasing variety of forms. The traditional, established publishers carry out most or all of the functions set out above. These are often multinationals affiliated with the major record companies, and include Sony ATV, Universal Music Publishing, Warner/Chappell and EMI Music Publishing (which at the time of writing was about to be sold to a consortium led by Sony ATV). There are also established independent publishers like Native Tongue Music Publishing or Albert Music, who are 'full service', too.

Some publishing companies are set up principally to administer the music publishing rights attached to recorded product put out by an affiliated

record label. Mushroom Music Publishing was primarily set up for this (but its operation is much wider now). Dew Process Publishing is a current example. There are also publishing administration companies such as Bug Music or Kobalt Music, which don't offer the 'full-service' above, but can provide a cost-effective way for a writer to get comprehensive administrative, and sometimes creative and licensing, services without having to enter a full publishing deal. To round out the list, there are also independent publishers who specialise in perhaps one or two areas, such as production music, church music, or TV, film and advertising licensing.

PUBLISHING INCOME AND COPYRIGHT

There is no purer form of copyright business than music publishing. All music publishing income is earned through the administration, collection and enforcement of copyright. The rights of copyright are like veins through which the money flows. If you don't own or control the vein, you don't get the sustenance.

'Publishing income' is the income flowing from the composition. It includes: mechanical and digital royalties; sales of sheet music; commissions for new works; licensing compositions for subsidiary uses such as film, television and advertisements; licence fees for the public performance, communication to the public and broadcasting of works.

RIGHTS, USES AND MONEY

You will remember from the previous chapter that the Copyright Act gives the owner of the copyright in a musical work (the composition) and a literary work (the lyrics) a number of exclusive rights. When you read the dry legislative provision (section 31, if you're interested – which you should be!) it may be hard to see how they underlie every moneymaking mechanism in the music publishing industry. But as you will see, they do.

THE RIGHT TO PUBLISH

The most common way of exercising this right is printing sheet music. (The Copyright Act specifically says that the right to publish does not include making records or live performance.) Many musical works are never 'published'.

Money from this source is called **print income**.

THE RIGHT TO REPRODUCE

This is the right to capture or embody a composition in a medium that allows it to be heard later. Common reproduction media include CD, digital sound files such as MP3, DVD, film, hard disc, memory card and the audiophile's hardy perennial, vinyl records.

When the reproduction is audio-only, we usually refer to the copyright owner's fee for allowing the reproduction as **mechanical income**, although the phrase is also used to describe royalties from the sale of music DVDs.

When the reproduction is audio-visual (such as film, television or other forms of combining recorded music with moving images, such income is referred to as **synchronisation (or 'synch') income**.

Both mechanical and synch income, flow from the exercise of the copyright owner's exclusive right to reproduce the work.

When people still bought physical records in large numbers, mechanical income was king. Digital sales have not made up for the reduction in the flow of mechanicals as the physical record business shrinks. Two key effects of that shrinkage are first, that publishers now look to licensing and synchronisation as the key income streams, and second, big publishing advances have largely gone the way of the dinosaurs because as the record business has changed, the publisher can no longer make a bet against a large anticipated mechanical income stream when negotiating advances with writers.

THE RIGHT TO PUBLICLY PERFORM AND THE RIGHT TO COMMUNICATE TO THE PUBLIC

These rights cover all the situations in which music is performed or communicated publicly – rather than privately. It includes live performances and communication by radio and television broadcast, streaming, broadband or telephone line, etc.

This income stream is generally called **performance income**.

THE RIGHT TO MAKE AN ADAPTATION

This is the right to change the work. The most common example of this is the making of arrangements or transcriptions.

If you do your own arrangement of someone else's work (unless the work is out of copyright or unless you have a contract with the rights owner) you will not earn any part of the original work's publishing income. By reworking or rearranging, you don't get any ownership of the original or its income stream.

For example, if Keith Urban rearranges a Slim Dusty composition, he can record it and perform it live. Urban would get the box office and the record royalties – but it would be Slim Dusty's estate that gets the publishing income.

COMBINATIONS OF RIGHTS

Some uses necessarily involve the exercise of more than one of the exclusive rights, at the same time.

An example of this is the digital download: The process requires an exercise of both the reproduction right and the communication right.

Accordingly when a song or ringtone is legally downloaded, the composer receives mechanical and public performance income.

SOURCES OF PUBLISHING INCOME

Music publishing is a multi-billion dollar industry, globally. In Australia alone, it is reckoned to be worth over \$400 million annually.

The key sources of music publishing income are mechanical reproduction royalties, synchronisation and similar licensing income, performance, broadcast and communication licence fees, and print income. The most important source is still mechanical royalties for the reproduction of music on recordings ('mechanical reproduction' is somewhat of a misnomer for digital recordings, but we will discuss that below). Synchronisation income has become even more important with the rise of music-based television programming including the various territorial versions of [*Insert Country here...*] *Idol*, [*Insert Country here...*]'s *Got Talent*, *So You Think You Can Dance* and *Glee*.

With the worldwide contraction in record sales, the related publishing income has reduced too, especially mechanical income. But it is still seriously big business.

Technology is likely to result in a more centralised system of copyright and royalty administration, which in turn may mean that local subsidiaries of the multi-national publishers will be handling either less of their own licensing work or less money, or less of both.

Sampling has become a more significant income source than before. The process for sampling melodies to interpolate them in other works is becoming more standardised and easy to use. One publisher has said 'Sampling is the new synch!'

Some publishers have pursued standing arrangements with the producers of long-running TV programs like *Home & Away*, giving the producers access to the publisher's catalogue for a fixed or favourable fee.

SHEET MUSIC

Publishing sheet music used to be a publisher's primary activity and source of revenue, but this is no longer so. The advances of technology over the last 70 years have superseded the publication of sheet music as the primary means of distributing music to the public. However, although the sale of sheet music has been swamped by recorded media, it remains a multi-million dollar business.

A large percentage of print music is sold to schools and other educational institutions. Further, sheet music is still hugely important to classical music publishers in that hundreds of thousands of students and professionals learn

and play this genre of music. A Messiaen quartet is not something you can learn just by listening to a record.

Print is currently in further decline, although the scope for graphical reproduction of music scores and notation has been expanded in the digital age: there are many educational software programs that use the convergence of audio and visual media online in the exercise of the 'print' reproduction right in music, such as 'follow me' animated screen scores showing how, what and when to play a particular part.

MECHANICAL RIGHTS

Even with the growing importance of licensing and synchronisation income, 'mechanical income' from the reproduction of music on sound recordings is still a very important source of income for music publishers (and therefore for composers). Basically, the payment of mechanical royalties is the way that composers share in the income that recording artists and record companies make from the use of their material.

WHAT ARE MECHANICAL ROYALTIES?

The mechanical royalty is the royalty paid to the owner of the copyright in music (or the lyric) in return for the licence to include that work on a record.

It is called a mechanical royalty because, in the days before records, the main method of reproducing songs was music boxes and later on player pianos using piano rolls. (They truly were mechanical devices.) In the early Copyright Acts these were referred to as 'mechanical devices'. A royalty was paid to the composer for the right to put his or her music on a player piano roll. Thus the term 'mechanical royalty' was introduced and stuck. The various Copyright Acts' mechanical licence schemes were introduced to break the monopoly that certain piano roll makers were getting over popular songs when they secured the exclusive right to reproduce the song on piano rolls.

Although mechanical royalties were a modest source of income in the early part of last century, it was not until modern means of technological reproduction permitted truly mass distribution and sales that the mechanical income became a river of gold. (It is ironic that mechanical income became important because the means of reproduction was in fact electronic rather than truly mechanical.)

'Mechanicals' (used in this context) is an industry term rather than a legal term and is not technology-specific. After all, the process of reproducing music on a CD is a digital one, not mechanical but we still use the term to describe the right to use a composition on a CD. But what about digital downloads? Thanks to the Digital Agenda Amendments to the Copyright Act, it is now clear that mechanical royalties are also payable in respect of digital downloads.

Now that digital downloads are increasingly important forms of distribution, it is important to note that the process of downloading involves the use of two distinct rights: the communication right (through making available and transmission on the internet) and the mechanical reproduction right. Consequently, both mechanical and performance/communication royalties are payable. (See below, under **Communication to the Public** for discussion on performance/communication royalties.)

It is not too cynical to suggest that the potential for income from mechanical royalties has been the greatest single reason for the development of the singer-songwriter in the last thirty years. The Gershwins, Rogers and Hammerstein, Cole Porter and most of the great names in popular composing between the 1920s and 1930s, made their fortunes by writing primarily for others. Virtually all of them had their songs popularised by someone else's performances. The Tin Pan Alley-style songwriter, who sat at a desk and turned out songs for others to perform and record, suffered for a while, but songwriters such as Leiber and Stoller, Goffin and King, Burt Bacharach and Hal David and others like them who all specialised in writing songs for major artists, had a revival in the 1970s and early 1980s. They made a more than comfortable living by writing songs for major artists such as Elvis Presley, Frank Sinatra, Whitney Houston, Celine Dion, Cher and John Farnham, who are not themselves composers.

COVERS

Only the owner of the copyright in a composition can authorise the first release of a recording of that music to the public. But once that release has happened, anyone can then record and release a cover recording of the composition, as long as they pay the appropriate 'mechanical' licence fee. The right to make covers is contained in the Copyright Act, and it is known as the 'statutory licence'.

You often hear people say that a certain musician performs 'all originals'. To the outsider, this is not particularly helpful as they might quite properly assume that all material is original to somebody. In this context, however, it simply means that the performer wrote the material. On the other hand, in the publishing business (and in this book), the term 'cover' means a musician's performance of material written by somebody else. Carl Perkins (who wrote *Blue Suede Shoes* while he was a young session musician with aspirations to fame) had a car accident on the way to the studio to record 'his' song. In hospital, he had the disconcerting experience of hearing Elvis's version hit the air before he could record his own. It was another example of the cover finding the success. By the time Carl Perkins recorded the song, everyone assumed he was covering the Elvis hit. Still, in the world of music publishing, no one had cause to cry. Perkins might not have sold a lot of records but

he certainly made a lot of money from the mechanicals earned from Elvis's success. (The Perkins incident is not likely to happen in Australia because the composer has the right to make or authorise the first release of the recording. This right is given to the publisher under the publishing agreement and the publisher would move to stop the ambush release.)

A publishing agreement for a singer-songwriter must contain different terms to those for a songwriter who is not a performer. For the former, it makes sense to distinguish between songs they release and popularise and versions of those songs recorded by others, but for the latter the distinction is meaningless. If a composer does not record and release his or her own songs then, in a sense, every release is a cover. To get over this, the publishing contract should not have a wide (or perhaps, any) royalty differential between 'originals' and 'covers'. (In such a case, the only important distinction in the royalty clause should be whether the writer or the publisher secures the cover.) However, in these cases, because the writer has no natural commercial outlet for his or her material, the general royalty rate will usually be less generous.

Given that mechanical income is paid regardless of who is recording the work, it is clearly to the composer's financial advantage to have as many people as possible record that work. The more versions recorded, the more potential sales and the greater opportunity to earn mechanical royalties. If it is true that about 250 different artists have recorded *River Deep Mountain High*, you can imagine that the mechanical income from that one song is a fortune.

Dolly Parton's song *I Will Always Love You*, which was a huge hit for Whitney Houston in 1993, almost certainly made Dolly more money as a cover than Dolly's own version. According to industry legend, at one stage the Whitney Houston version was outselling the combined sales of the other ninety-nine records in the US Top 100 Singles Chart.

Publishers would always like to be more successful at getting recording artists to record the work of their writers but, in Australia, the opportunity for placing a cover is restricted because the cult of the singer-songwriter is so very strong here. It is not uncommon to hear musicians speak unkindly of performers who do covers. It is (quite wrongly) perceived as some kind of indication of inferior talent even though, in recent times, the best selling Australian recording artists have been artists such as John Farnham, Jimmy Barnes, Anthony Warlow, Kylie Minogue and Jessica Mauboy, to name only a few, who have notably recorded other people's songs. Ask Joe Cocker about the value of covers – he even made a Beatles song his own! All of these performers have attained huge sales of albums that include featured material written by others, proving that a good song will always justify being recorded, no matter who writes it.

It is no wonder that when one of these artists prepares for a new album, the publishers get flushed with excitement. If they can place just one of their

songs on a platinum-selling album in Australia, it is likely to be worth about \$7000 in mechanicals alone, not to mention the likely public performance income if it gets airplay too. If they can get a cover on the record of a best-selling international artist, through international sales the royalties from just one album track can be many times more. Even the 'B' tracks on a single are valuable, because, although they earn no performance royalties (assuming they don't get airplay), the amount of mechanical income they earn is identical to that of the feature track. Although these days, with the singles market predominantly made up of data from iTunes and single song downloads, the B-side is disappearing and when physical carriers go, the term 'B-side' itself will be as anachronistic as the term 'mechanical'.

If a cover of your song is included on a 'Various Artists' compilation album you will be paid your mechanical rate, pro rata to the number of tracks on the album.

Of course, sometimes the writer of the original work does not like the cover version. Some composers would prefer that there were no cover songs at all. For example, in a recent interview Prince claimed that a cover recording means your original version 'doesn't exist anymore'. He objected to the fact that, for example, there's only one version of the TV series *Law and Order* but there are several versions of his songs *Kiss* and *Purple Rain*. He objected to the cover performers being identified with his hit songs, instead of himself as the composer.

There are many dire covers of fabulous works. However, provided the cover artist, or their label, pays the mechanical royalty to the Australian Mechanical Copyright Owners Society (AMCOS) (or directly to the publisher, as most mechanicals are paid to the publishers directly, via the publisher's one-to-one licences with the Majors, bypassing AMCOS), there is not much that the composer can do. Their only angle is to argue that the cover is a 'derogatory treatment' of their song, and thus, by infringing the composer's moral rights, making the cover breaches the Copyright Act. Even so, that won't make the cover an infringement of copyright provided that the maker of the cover paid the prescribed mechanical royalty.

In 1996, before the introduction of moral rights in the Copyright Act, the case of *Schott Music International GmbH v. Colossal Records* came before the Federal Court. It was a case where the composer's representative argued that a cover version was a 'debasement' of the original work and therefore not allowed under the statutory licence.

In that case, a Spanish group had done a techno version of 'O Fortuna' from the classical work *Carmina Burana* by Carl Orff. The publishers of *Carmina Burana* sued in the Federal Court on the basis that the new work was a debasement of the original and was therefore outside the terms of the statutory licence (which, at that time, stated that the licence didn't extend to

a cover that debased the original work). Justice Tamberlin's judgement, which was upheld on appeal, may well be a touchstone for similar cases in the future, even though the case was really about the debasement of the value of the copyright, not the composer's reputation.

He extensively discussed the meaning of 'debasement'. Essentially, he decided that determining what 'debase' means calls for a value judgement, based on a significant lowering in the integrity, value, esteem or quality of the work. This, he decided, had to take into account the broad spectrum of taste and values of the community (not just those of the composer or a limited section of the musical industry). At the end of the day, the court had to decide whether the adaptation of the original was so extensive, detrimental or inferior, as a whole, that it amounted to a debasement. (See (1996) 36 IPR 267 at 274.) He decided that the techno version was not a 'debasement' and was therefore covered by the statutory licence. The permission of the widow Orff was not required. So long as the record company paid the mechanical royalty, the record was legal.

The judge was at pains to say that the case was about copyright and the statutory licence, not about moral rights (because at the time, moral rights were not part of Australian law). Given that there are no other music cases on the meaning of 'derogatory treatment' in Australia, his judgement is likely to be taken into account if the issue comes up again.

SYNCHRONISATION IN FILM OR TELEVISION

All films and television programs use music on their soundtracks. To allow them to do this, the film producer must obtain what is known as the 'synchronisation rights' to the music. (This is the case whether the film is intended for theatrical or non-theatrical exhibition, transmission by cable or closed circuit, for television or whatever.) It is called this because the producer is synchronising the music with the moving images.

Producers have a choice; they can either use so-called 'production music' (also called 'library music' or 'mood library music'), commission a composer to write new music for the film, or license particular tracks of material that has already been released on record. Sometimes a producer may use a combination of all three.

USING PRODUCTION MUSIC

Production music is basically an archive of generic material composed and recorded especially for use in film. If you want 'love music', 'earthquake music', 'battle music' or whatever, all you have to do is use the library's index. It (and uniquely, the sound recording) is owned by the publisher and, because it is not available for exclusive licences, it is generally quite cheap to license. Production music, unlike other sources of music, is licensed at

fixed rates for particular uses. You select the material you want and pay for the amount you actually use. Much licensing can be done through AMCOS although there are 'buy out' production music libraries that are also available for non-exclusive use.

COMMISSIONING ORIGINAL SOUNDTRACK MATERIAL

The commissioning of new works for use on soundtracks is very important to the financial health of many composers. Composers are sometimes commissioned to write just one featured song, or to write the whole soundtrack, or to write the soundtrack plus supply the fully-mixed stereo sound recording of the commissioned music.

If you have signed a standard term agreement with your publisher, you will probably have assigned to the publisher all rights in the works you compose during the term of the agreement. Accordingly, if a producer approaches you directly, you cannot legally commit to the deal before discussing it with your publisher and getting the publisher's approval. Not only is this legally correct (because you may not have the necessary rights to do the deal yourself), but it is also commercially sensible. Your publisher may be more knowledgeable about the going rates and terms for such deals and may well have greater bargaining power. For example, the publisher might be able to offer assistance from its affiliates in other territories to help publicise the film or, in some other way, convince the producer to improve your deal. Negotiations and final agreement for film commissions must be between the publisher and the film producer, rather than with you, though you can obviously assist in the negotiations.

LICENSING PRE-RECORDED AND RELEASED MATERIAL

The third choice, licensing the use of material that has already been released on records, has been used for decades, particularly for use over opening and closing credits. During the last 20 years, however, there have been many hugely successful movies that have moved the music up from the background and made it the centrepiece of the film. Examples like *Saturday Night Fever* (the biggest selling soundtrack of all time), *Titanic*, *Romeo + Juliet*, *The Bodyguard*, *8 Mile*, *The Adventures of Priscilla*, *Queen of the Desert*, *Reservoir Dogs* and *Pulp Fiction* show the commercial attractiveness of combining popular and familiar music with the story-telling capabilities of movies. Apart from anything else, it creates a wonderful opportunity to sell the soundtrack album, which can turn a break-even film into a commercial success.

For further discussion, see Chapter 30, **Music in Advertising** and Chapter 31, **Music in Film**.

ADVERTISING SYNCs – THE PROMOTION OF THIRD PARTY GOODS AND SERVICES

Those in the marketing and promotion business have for many years realised that an association with music can enhance the image of the service or product that they wish to promote. Many composers make their entire living (and a very good living too) writing jingles for radio and television advertisements and other corporate promotions.

More recently there has been a great increase in the amount of licensing of standards or hit songs from the not very distant past for this purpose. *I Still Call Australia Home* has obvious appeal for a Qantas commercial and *Who Wants To Be A Millionaire* was a natural for Lotto.

So, licensing music for such promotions can be lucrative. Although licensing music for ad campaigns is the main game in this category of exploitation, there has been an increasing use of music by TV networks in association with promotional spots for programs and for the network itself.

Classical music has become rather more popular with advertisers since the *Three Tenors* video and CD was so successful. Advertising agencies love using classical works to enhance the 'class' of products. The fact that most classical works (though not the recording itself) are out of copyright and so can be used free is, of course, entirely incidental. A word of warning though: particular arrangements of very old classical pieces may still be in copyright, so never assume a work is out of copyright. Always check carefully first, to avoid a nasty surprise.

Until recent years, most publishers in Australia had a reactive approach to this income source. They would wait for an advertiser to approach them for permission to use a song, rather than chase the advertiser. In the last decade though, this has changed. Now, all of the major publishers have hired Licensing Managers to promote actively the use of their catalogue by advertisers. In the US there was a species of song salesmen called 'pluggers' because they went from studio to studio, plugging a publisher's songs to name artists, to get them to record the publisher's song. That doesn't happen any more. The business has become more sophisticated. The new pluggers use email and sampler tracks, not shoe leather. With the contraction in the record business, and the centralisation of administration, publishers are hiring more pluggers and licensing managers and less royalty administrators.

There has recently been a rise in boutique music supervision companies, who will source music and negotiate sync licences for the advertiser or the network. They provide a knowledgeable and nimble link between the publishers and the advertisers.

Whether or not composers are prepared to allow their material to be used this way, is a matter for negotiation when entering the publishing contract.

Most, quite rightly, want to maintain some control (see Chapter 13, **Common Clauses in Publishing Deals**, where it deals with artistic control).

PUBLIC PERFORMANCE AND COMMUNICATION TO THE PUBLIC

Every time copyright music is performed in public or broadcast, a royalty is payable to the copyright owner for that use. Because it would be impractical and too expensive for individual composers to collect the fees, composers and publishers formed companies to administer the public performance and broadcast rights on their behalf.

In New Zealand and Australia, the Australasian Performing Right Association (APRA) performs that role. APRA is a non-profit company, established by copyright owners (both publishers and writers) to administer public performance of music. APRA's role is dealt with in detail in Chapter 26, **Collecting Societies** but, in brief, it operates by having its members assign to it the right to perform the composition in public and to communicate it to the public (including by way of broadcasting). That way, it can grant licences and collect fees from a wide range of public users of music such as radio and television stations, shopping arcades and venues. The money collected is then placed in revenue pools (e.g. commercial radio income, ABC concert, etc.) and distributed according to each work's share of the total performances.

Every composer should be an APRA member, unless they have a very good reason not to be. To do so, you must either have had your songs performed or otherwise exploited, or have a contract with a publisher that is a member of APRA or one of the equivalent bodies overseas that are affiliated to APRA.

The rules of APRA provide that no less than 50% of the income collected is to be paid directly to the writer. Accordingly, the writer gets a minimum of 50% of the APRA income. In practice, there are very few 50/50 deals. Most publishing agreements grant the writer a greater split of the APRA income. How this is described in the agreement will vary from contract to contract, but it is common for a publishing agreement to say something like the following:

The Writer will receive 70% of the gross fees paid by the collecting society in relation to performing rights in the Compositions (it being understood that the Writer will receive 50% of the gross directly from the collecting society and 50% will be paid to the Publisher, of which the Publisher will pay the Writer 40%).

It is simpler than it looks: The gross income is 100%. The collecting society directly pays the writer the minimum 50%. It pays the publisher the other 50%. However, if we assume the contract specifies that the writer is to receive 70% of gross public performance income, the writer is still 20% short. This comes out of the 50% paid to the publisher. Given that the publisher has

been paid 50% of the gross it must pay or credit the writer with 40% of **that** amount (40% of 50% equals 20% of the gross amount), to bring the writer's receipts up to 70%.

The 50% share paid by APRA directly to the writer is a 'minimum'. It is perfectly possible to negotiate a deal with the publisher whereby the writer is paid his or her full percentage directly by APRA. However, this is uncommon for two reasons:

- First, publishers need to recoup their advances: although they can't touch the 50% minimum paid direct to the writer, they can use the balance to recoup any outstanding advances. Using the same example as above, if the writer was unrecouped, the publisher would not actually pay the additional 20% of gross in royalties. Instead, it would credit that amount to the recoupment of the advance.
- Second, even if there is no advance to be recouped, it means that the publisher will have the use of the money (and thus the interest on it), for several months, until the next accounting is due to the writer. (Even in this era of low interest rates, six-monthly accounting means that considerable sums are earned by publishers from the interest on the writers' share of revenue.)

This means that even if you are heavily unrecouped with both your record and publishing company, if you are doing a lot of live work and you make sure you submit your APRA Live Performance Returns through APRA's online facility, your APRA cheque can be quite substantial. (How this is collected, calculated and distributed is discussed in some detail in the next section.)

Even though APRA has an effective monopoly over licensing the performance and communication of music in Australia, it is generally regarded as a fair and well-administered one. Also, it is not absolute: APRA members are able to 'opt out' their music for certain groups of used and 'licence back' songs for certain uses of their music that would otherwise be controlled by APRA, for instance for tours, music-on-hold or for certain TV and advertising uses. (See Chapter 26, **Collecting Societies** for more on this.)

SUNDRY INCOME

All publishing agreements have (or should have) a clause relating to sundry income – all the bits and pieces that don't fall in the major categories already discussed. This is the catch-all category.

An increasingly important category of sundry income is so-called 'black box' or just 'box' income: this includes unclaimed income held by collecting societies and income received by publishers that is not practicable to allocate to a particular piece of music, e.g. the proceeds of an out-of-court settlement with a catalogue-infringing peer-to-peer file-sharing system, where a global sum might be paid. Each collecting society and publisher

will have its own method of calculating how such income should be divided. With bundling of music becoming more common, this income source, and the methods by which it is to be equitably divided up between publishers and writers will be closely negotiated points, particularly for deals involving catalogues of works. Technological measures make it easier to track the use of individual songs, and thus provide greater accuracy, but wherever this is truly impossible, the sundry income 'black box' method (or non-method!) may be used.

Sundry income is also derived from, say, the hiring of the orchestral parts of a full score or licensing a newspaper to publish the words of a lyric or a clothing manufacturer to print lyrics on a T-shirt. And if or when an impost is levied on internet service providers to help offset the financial damage that artists, writers, music publishers, record labels and other copyright-based businesses suffer due to the piracy of their products, that levy might be treated as sundry income unless sufficiently detailed data on the use of individual songs can be compiled and used as a basis for calculating income shares.

COLLECTION, CALCULATION AND DISTRIBUTION OF PUBLISHING INCOME

SHEET MUSIC

In the popular music field, most publishers in Australia do not even publish sheet music. Most issue a print licence to other publishers such as Music Sales or Hal Leonard that have specialist skills, to manufacture and distribute it on their behalf. This is simply because of the high cost of specialist printing, administering the publication, warehousing and distribution. It makes commercial sense to minimise the overheads and license a specialist to do the task, underwrite the costs and to run the commercial risks.

Print licences can be restricted to the publication of single works, special mixed folios or may encompass the whole catalogue of the publisher.

For example:

- Company A and Company B enter a print licence.
- Company A (the licensee publisher) prints, distributes and administers the sheet music and also collects, accounts for and pays through the royalties due to Company B (the licensor publisher).
- Company B merely supplies the compositions (and the necessary rights) and receives its share of income from Company A.
- Depending on the deal, Company B will either pay through to the writer a share of that income or may have Company A perform that function as well.

The writer's share of sheet music income is usually based on a royalty of between 10% and 14% of the recommended retail price of copies sold (where

the publisher publishes the sheet music itself) or, more commonly, between 70% and 85% of the publisher's receipts where the income derives from a print licence issued by the publisher to a specialist print publisher. Where the music is included in a folio (i.e. a collection of works), the royalty is reduced in proportion to the number of your works in the edition. The publisher meets the cost of printing, distributing and promoting the material.

Although publishers usually process their sheet music sales invoices on a monthly basis they will not account separately for sheet music sales. This is not negotiable. Accounting for sheet music sales will be included in the usual six-monthly royalty accounting statement.

MECHANICAL INCOME FROM RECORDS

The legal basis for the mechanical royalty system is worth setting out here. The Copyright Act provides that the mechanical royalty rate will be:

- (i) *the royalty agreed between the manufacturer of the record and the owner of the copyright in the musical work; or if no agreement can be reached,*
- (ii) *an amount determined by the Copyright Tribunal; or*
- (iii) *if no such agreement or determination is in force, 'an amount equal to 6.25% of the retail selling price of the record'.*

This is referred to as 'the statutory rate'. (It is set out in sections 54 to 64 of the Act.)

Although the Act sets the basic rate, the rate can be varied by contract. For many years there was an agreement in place between AMCOS, (which represents the publishers' side of rights on recordings) and the Australian Record Industry Association (ARIA, which represents the record labels) to vary the statutory rate that applies to ARIA members. It was a complex agreement, one that was negotiated hard. Eventually both AMCOS and ARIA agreed it would be better to have individual contracts rather than an industry-wide agreement, and, in 2006 the old approach was abandoned, and AMCOS introduced its own Physical Product Agreement licence scheme.

The most obvious changes to the statutory scheme are that the rate is lower and more flexible and that the headline percentage is based not on the retail selling price 'RRP' but on the 'PPD' (the published price to dealer – the maker's highest listed wholesale price to dealers). These days it is easier for both parties if the rate is calculated on the PPD because the retail price can vary so much. Thus the usual current AMCOS mechanical rate is 8.7% of PPD (subject to a minimum rate – generally 50¢ per unit sold). A retail rate of 6.0% still applies where it is appropriate – e.g. Readers Digest who set their own retail price and sell directly to the consumer.

Where there are a number of tracks on the recording, the mechanical royalty is divided equally between each musical work. (This is referred to as

‘pro rata per track’ in contrast to ‘pro rata by time’ where the longer tracks attract larger fees than shorter ones.) If one of the tracks on the recording is a medley, each song in the medley receives a pro-rata share of that track. Therefore an album with 12 tracks where one of the tracks is a medley of three songs, the medley track receives 1/12th and each song in the medley gets 1/3rd of that 1/12th. However, a pro rata-by-time share applies for DVD releases of television programs where mechanicals are payable.

MECHANICAL INCOME PAYABLE IN OTHER SITUATIONS

Although the manufacture and sale of recordings is the most important source of mechanical income, there are a huge number of different situations in which a mechanical licence can be granted by AMCOS on behalf of its publisher members. Some of these include:

- (i) **Demo/Audition:** Audio-only recordings specifically designed for submission to music publishers, record companies, artists, orchestras, bands, etc. to promote the artist and/or composer’s work appearing on the recording.
- (ii) **Background Music:** Audio-only recordings made specifically for your own use as background to a performance or other event. These recordings cannot be used for advertisement purposes or for the purposes of promotion of an event or product. Background music licences are also obtained by pubs and shops and other businesses that recognise the importance of music (and in particular, the right music) to their customers and thus to their profitability.
- (iii) **Educational:** Audio-only recordings made by an educational institution where the recordings are made available free of charge to the students. Where the institution intends to sell the recordings to students, such recordings come within the ‘for retail sale’ category. Where a person is making recordings for an educational purpose and supplying them to educational institutions or their students, again such recordings come within the ‘for retail sale’ category.
- (iv) **Premiums:** Where the record is going to be given away to promote a product (such as a magazine) the specific approval of the publisher will be required. AMCOS cannot grant a licence or nominate a fee. You must get the publisher’s approval (see below).
- (v) **Ringtones and Downloads:** When musical works are sold as downloads or used as mobile phone ringtones, reproduction

and communication rights are both being exercised. To facilitate the process, APRA and AMCOS operate joint licence schemes.

THE MECHANICAL LICENCE PROCESS

Mechanical licensing can be done online electronically, using the copyright information stored in APRA-AMCOS's extensive works database, the Copyright Management System. It works for large and small record companies alike.

REPORTING THE USE

For each new release clients must submit the same information – including details of the production as a whole (title, artist, catalogue number, etc.) and of each track featured on the production (track title, writers, etc.). A matching algorithm processes the information submitted and either links the tracks to existing works in the database or creates new records. The results of this are checked manually and then made available to publishers to view and to make claims via the APRA-AMCOS online data exchange system.

CLAIMING THE WORK AND THE ROYALTY

Any publisher who claims ownership or control of any part of the mechanical right of the work must make its claim within 10 working days and, if its permission is required, must state whether or not the intended reproduction is permitted. The publisher's permission is only relevant if recordings of the particular work have not previously been released. This is the so-called 'first use' right and it applies equally to songs and instrumental works.

To explain, let's assume a publisher controls the song. (The right usually belongs to the composer if the work has not been assigned to a publisher.) If this recording will be the 'first recording' of the song, then the publisher may withhold permission to make the recording. However, once the first recording of a particular song has been released, the Copyright Act provides the 'statutory licence' allowing anyone to make and release records of that song provided they pay the proper mechanical copyright royalty.

If two publishers claim the same share of a piece of music (and this does happen), the publishers have to work the 'Disputed Claim' out between them – the record company just has to keep accruing the proper amount of royalty for each record it sells in the meantime. AMCOS operates a collection system for holding the income while the dispute is being worked out.

ISSUING THE PRESCRIBED NOTICE

At the end of the 10-day notice period, an initial Prescribed Notice is created. The whole process takes some 12 working days, a fraction of the time taken under the paper-based inquiry system. The Prescribed Notice shows the

current mechanical ownership details. As and when ownership changes to works attached to the production occur, new Prescribed Notices are generated to reflect the new position. In this way ownership information is always kept up to date, allowing accurate allocation of the mechanical royalties.

PAYMENT

The major record companies – Sony, Universal, Warner and EMI (though at the time of writing, EMI was about to be sold to Universal), which pay mechanical royalties directly to the publishers – can upload the latest Prescribed Notices to their copyright systems to ensure each quarter's payments are made accurately.

The other 'non-major' labels – which pay via AMCOS – are informed if the 'AMCOS royalty' has changed and the transparent nature of the process allows labels to check information easily. Then, when the label supplies the sales reports, AMCOS's distribution system splits the amount under invoice and distributes to each sharer of each work according to the details on the Prescribed Notice. It even takes into account any retention allowances and maintains an historical record of sales and returns.

One of the important terms of the AMCOS licence is that the manufacturer must supply manufacturing information to AMCOS. This also applies to manufacturers of third party product. This allows AMCOS to effectively supervise the mechanical right by comparing the figures provided by the label and the manufacturer, thus making it difficult for record companies (big and small) to under-report.

ACCOUNTING

The accounting will detail, among other items, the title, catalogue number, royalty rate, number of units sold and amount of royalty.

Record companies have to account to the publisher on a quarterly basis, or to be precise, within 60 days from the end of each quarter. This does not mean, however, that you will be able to persuade your publisher to account to you for your mechanicals on a quarterly basis. This is not negotiable.

RETURNS AND RETENTIONS

Although the Copyright Act refers to royalties being payable on records manufactured, one of the important concessions that was negotiated into the AMCOS-ARIA Agreement is that mechanicals are in fact only paid on records that are sold. ('Records sold' is the number of records delivered or invoiced to a retailer, less the number returned.)

In order to protect the record company from excess payments of mechanical royalties, the AMCOS/ARIA Agreement allowed the record companies to retain a proportion of mechanical income that would otherwise be payable, to take into account the returns. In the United States, the retentions

are frequently between 50% and 75%! This crazy situation is largely due to the fact that virtually all records are sold there on 'sale or return' (meaning the retailer can return any unsold records for a full credit), but apart from that, the American record companies tend to over-ship stock to the shops, especially if the act is touring. This means (in the dreaded record industry expression) records can 'ship platinum and return gold'!

In Australia virtually all physical records are shipped on a sale or return basis. Over-shipping tends to be due to market miscalculation rather than a marketing technique.

There are two kinds of retentions provided in the current AMCOS licence:

RETENTIONS ON STANDARD WHOLESALE SALES

On these, a record company is allowed to keep a retention of 10% calculated on the net number of units of the record delivered during that accounting period. This is permitted for each of the first four accounting periods after a record's release. Thereafter, no retention is allowed.

RETENTIONS ON SALE OR RETURN PRODUCT

For records that have been distributed on a sale or return basis greater retentions – reducing from 40% to 7.5% – are permitted over the first eight accounting periods.

THE FINANCIAL RESULTS

If a record is commercially successful, the mechanical royalty can mean large amounts of money for the publisher and composer.

On a new-release CD with a standard PPD of, say, \$16.00, the current statutory mechanical copyright royalty in Australia is approximately \$1.40 per unit. If the record sells 50 000 units, the gross mechanical royalties generated are about \$70 000 in Australia alone. That amount would be collected by the song publisher (either directly from the record label, or from AMCOS, less its commission). The publisher then splits the income between itself and the songwriter, in the proportion set out in the writer's publishing agreement. If it were a 75/25 deal, the writer would earn about \$52 000, provided all the songs on the record were composed by that writer. If there were 10 tracks on the album, and a different publisher and composer controlled each track, each publisher would receive about \$7000, of which the relevant composer would get \$5250 under a 75/25 deal.

For downloads, in 2009 the Copyright Tribunal approved a rate of 9% of the selling price of the download (subject to minimum rate – e.g. 9¢ per single track download). Unlike physical sales, where AMCOS has agreements with record labels, for downloads digital service providers like iTunes and BigPond Music are licensed directly by APRA-AMCOS. The 9% tariff comprises both

a reproduction and communication element, meaning that a portion of the licence fee is distributed through AMCOS and a portion through APRA.

UNITED KINGDOM PRACTICE

In the UK, there is no statutory rate. The mechanical royalty is set by agreement between representative organisations of the record industry and the publishers.

For all European Union member states except Ireland and the UK, the mechanical royalty rate is set by a contract between the *International Federation of the Phonographic Industry* (IFPI) and the *Bureau International des Sociétés Gerant les Droits d'Enregistrement et de Reproduction Mécanique* (BIEM). The current effective rate is about 9% of the wholesale price of the CD (the default rate is about 11% but they allow deduction of 9% of that for rebates and discounts and 10% of that for packaging). For downloads, the rate is still set on a territory-by-territory basis, and ranges from 6% to 12% depending on the territory.

The rates in Ireland and the UK are 7.5% and 8.5% respectively for physical products and 8% of gross revenue for downloads. (As in Australia, the download rate covers both reproduction and a performance component.)

UNITED STATES PRACTICE

The USA uses what is called a 'penny rate'. It is based on a fixed number of cents per track, not a percentage figure. The mechanical royalty rate in the USA was fixed at a low 2.75 cents per track for many years. When an escalating rate came into effect, the US record companies promptly amended their standard controlled composition clause to neutralise the increase by capping the rate at 75% of the full rate for physical records, where the songwriter is also the recording artist (or the songs fell into another of the categories of 'controlled composition' – see below). There were also special provisions to cover discounted records and records that are distributed but not sold for money, and the labels also capped the rate to a maximum of ten songs, even if the CD has more than ten tracks on it. The royalty will continue to increase automatically: in 2006 the physical product rate and permanent downloads became 9.1 cents per copy or 1.75 cents per minute. That rate was reviewed in 2007, survived, and remains current at the time of writing. The rate was extended to cover digital downloads (and a higher penny rate of 24¢ was introduced for ringtones). Licenses issued after 1 March 2009 are subject to interest for late payments of 1.5% a month, or 18% a year. The introduction of this clause promoted the multi-million dollar 'Late Fee Settlement' between the National Music Publishers Association (NMPA) and the Recording Industry Association of America (RIAA).

CONTROLLED COMPOSITION CLAUSES

For a discussion of controlled composition clauses and other caps on mechanical income imposed by record contracts, see the section on Capping Controlled Compositions in Chapter 23, **Record Royalties**. It is interesting to note that although record labels can agree with artists to cap the statutory mechanical rate payable for controlled compositions on physical records, the US Copyright Act provides that the statutory rate for digital reproductions overrides any post-22 June 1995 contractual arrangements. In essence, the labels can't reduce the statutory rate for downloads the way they can for CDs.

SYNCHRONISATION WITH FILM OR TELEVISION

As was described earlier in this chapter, when a film or TV producer needs music, there are standard sources: production music; original, commissioned music; and sound recordings that have already been recorded and commercially released.

PRODUCTION MUSIC

Licences for the use of production music (which used to be called library music or mood music) can be issued by AMCOS on behalf of many music publishers. Most other synchronisation licences are issued directly from the publisher. This is because most publishers have to consult their writers (or the licensor, where the songs are licensed from a third party) whenever their works are to be synchronised. Good publishers will consult this way, even if the contract does not actually require it.

The cost of licensing production music is considerably less than of the cost of licensing a musical work that has already been published (excluding the cost of licensing the sound recording that embodies that work). For producers, it can be the most inexpensive way of obtaining music for synchronisation.

COMMISSIONED MATERIAL

Even though the Australian fees are much lower than in the United States, a small documentary can still attract a commission fee of \$10 000 and a film or a television series can be worth between \$10 000 for low-budget and \$100 000 for high-end productions. Of course the fees vary enormously, depending on the budget of the production and the experience and reputation of the composer. The rates also plunged, over the last decade or so. This may reflect efficiencies in the cost of production, but it is sobering news for screen composers. (See Chapter 31, **Music in Film**.)

PRE-RECORDED AND RELEASED MATERIAL

The cost of licensing such music depends on the success the song has enjoyed on record, the place of intended exhibition – theatrical or non-theatrical – and the territory of the licence sought, how often the song has been used in synch before, and the type of rights sought (i.e. the producer may also want to secure cable television, free television and home video rights but not, usually, rights for the use in games). Each kind of use attracts an additional fee.

Expect the synchronisation rights for million-sellers to cost more than those for songs that stiffer, assuming comparable use in the soundtrack (i.e. featured or as background). Theatrical costs more than non-theatrical and ‘world’ rights cost more than for Australian rights. This said, as only the roughest of guides, the licence fee for world theatrical rights can be between \$1400 and \$2500 per 30-second grab, but the rights to ‘contemporary standards’ can cost a lot more than that.

Producers should ask for a quote from the publisher for each of the rights. Then, the producer can secure and pay for the rights ‘as needed’ at the agreed quoted rate, rather than buy them all up front. This is common when securing rights in sound recordings, but seems less common when licensing from publishers. (Note however that it is usually more expensive to buy the rights piecemeal.)

THE PROMOTION OF THIRD PARTY GOODS AND SERVICES

The publisher of the music grants licences for use of songs in commercials and the like. Before granting such a licence, it is standard practice for the publisher to consult with the writer and obtain his or her consent to the use. Some writers object to their songs being used to promote certain types of goods. It was only a dozen years ago that any of the Lennon-McCartney songs were licensed for advertising uses.

The fee is negotiated directly with the music publisher. The rates charged will vary according to the success enjoyed by the song, the reputation of the writer, the nature of the product that wishes to associate itself with the song, the territory, the duration of the promotional usage, the intended audience, and how determined the intended user is to secure the rights. Even in Australia, national advertising campaigns have been known to attract fees well in excess of \$500 000 for a 12-month licence. In larger markets, the fees can be much greater.

COMMUNICATION TO THE PUBLIC

Every time copyright music is performed in public or broadcast, a royalty is payable. Most 'public performance' of music is licensed by APRA (discussed briefly earlier in this chapter).

As soon as a publisher enters the contract with a writer, it will notify APRA that it controls the works of that writer and notifies it of income splits.

LICENSING USERS

APRA has established a network of 'blanket' licences with the users of publicly performed music: radio stations; television stations; ringtone providers; digital service providers; webcasters; live music venues; halls; function centres; aerobic and fitness classes; film screenings; churches; schools; sports stadia; jukebox and video jukebox operators; public transport operators; cinemas; dance schools; electrical appliance shops; discos (including mobile discos); skating rinks; background music users and so on. This can amount to big money. APRA collected over \$148M in domestic licence fees in the 2010 financial year with \$88M coming from broadcasting, \$55M from public performance and \$5.5M from online.

The manner of calculating how much will be payable to APRA for the right to publicly perform music depends on the type of use. Each type has a different formula. There is no point in detailing all of these formulae here, but generally speaking, where music is used to enhance a business, flat rates may apply, but where music is at the actual core of the business, they are based on a percentage of gross income. Some examples follow.

- **Cinemas:** A licensee will pay a fee of 0.42% (excl. GST) of gross box office receipts revenue.
- **Dance Parties:** Dance Parties with a box office, i.e. ticket sales, are generally licensed under APRA's Dance Party Licence. Fees are calculated at \$2.83 (excl. GST) per person admitted, subject to a minimum fee of \$54.56 (excl. GST). Licence fees are generally paid after the event, but in some cases an advance payment is required. APRA may also request a list of the works played by each DJ on the night. The playlists are important because they allow APRA to identify the composers who should receive royalty payments. If your dance party is free to the public, you still need to take out an APRA licence to play copyright music.
- **Jukeboxes:** \$236.35 (excl. GST) per annum in the hospitality sector (e.g. club, pub, hotel, bar, restaurant, café, etc.).
- **Live Musical Performances:** Either 2% (excl. GST) of gross annual expenditure upon all performing artists or where admission fees

are charged and collected by performers or their agents, 1.5% (excl. GST) of the gross annual sums paid for admission.

- **One-off Concerts:** 1.5% of the gross admission receipts.
- **Jingles:** Public performance royalties are paid for music used in radio and television advertisements. How they are calculated depends on whether the advertising campaign is local, state or national, frequency of play and so on.
- **Commercial TV Services** (including local stations): This is covered by a negotiated, industry-wide, lump sum.
- **Commercial Radio:** Monthly fees are charged based on a percentage of the station's gross advertising revenue, which varies between 0.54% and 3.76% (excl. GST) depending on the proportion of APRA works broadcast as a percentage of total airtime. Stations provide quarterly reports detailing the number of times each song was played in the quarter.
- **Subscription TV Services:** These pay a fixed rate of 41.5¢ per subscriber per month irrespective of number of channels per service. Commercial premises (businesses, pubs and hotels) pay a higher monthly rate.
- **Community Radio:** For these licences, fees are assessed on licensees' music usage, grant revenue and the split of their income between exempt and non-exempt sources. Stations with a permanent broadcast licence issued by the ACMA pay between 0.5% and 3.5% of revenue. For stations that hold a temporary licence with the ACMA, the tariff is the higher of 1.5% of revenue or \$150 (excl. GST).
- **Narrowcast TV:** 0.9% of total revenue.
- **Narrowcast Radio:** The rate varies depending on amount of APRA works broadcast, from 3.5% – 0.5% of applicable revenue.

Of course these figures are varied from time to time (including by negotiation or CPI adjustment), so they should only be treated as guidelines. The current figures can be obtained readily from APRA.

EXCEPTION FOR GRAND RIGHTS

APRA does not collect income earned from 'Grand Rights.' These are the rights:

- to perform a work in a 'dramatic context' (i.e. with costume, scenery or other dramatic effects)
- to perform oratorios and large choral works (i.e. those over 20 minutes)
- to perform works in association with ballet. (In other words, performance of ballet music by itself, for example, in a concert, does not involve Grand Rights, while a staged ballet does.)

If Grand Rights are involved, you must negotiate directly with the publisher who controls the rights (although with smaller shows APRA often acts as the publishers' agent and streamlines the process). Ask early. Do not assume that you will be given the rights. In many cases permission will be refused: an exclusive licence may already have been granted to somebody else; the publisher may not be convinced of your ability to mount the show; or the copyright owner may simply choose not to grant the licence.

TRACING PERFORMANCES

The validity of any system of royalty allocation demands that the right people are getting paid. This is achieved by a combination of means, which are of varying precision according to the availability, ease and cost of obtaining data. Some of the performance calculations are precisely calculated according to actual use, some according to a sample of use, some according to analogy. Distribution practices are checked and approved by the APRA Board, so the basis of calculation is kept in perspective.

- **Radio:** APRA conducts 'census' logging – meaning that all broadcast featured music is logged.
- **Television:** The survey system is exemplified by the treatment of television. The music that is broadcast on television is calculated using reports supplied by the stations as to the music used over particular survey periods.

An example of pooling of income (to save unjustified administrative expenses) is the adding of money obtained from background radio licences to radio income, on the basis that what's popular on radio is probably popular on jukeboxes. (This is referred to as the 'follow the dollar' approach.)

- **Concert performances** are analysed individually, and performance royalties are allocated to the specific copyright owners involved.
- **Digital Downloads** are also analysed individually, and royalties are allocated to the specific works according to their relative number of sales.

DISTRIBUTION

After deducting its expenses (generally around 12% – 13% – one of the lowest of any comparable collecting society in the world), APRA allocates its income to members. The method of income calculation necessarily mirrors the method of usage calculation.

For example, station X pays its APRA licence fee and supplies census electronic logs of all music put to air. The music reported on those logs is paid out of station X's licence fees. If there are 260 commercial radio stations in Australia, there are effectively 260 commercial radio 'pools'. By contrast, the

calculation of royalties payable as a result of concert performances is done on the basis of actual works performed and reported.

SELF-REPORTING

APRA Live Performance Returns (LPR) are the method for reporting to APRA each use of your songs – even your own performances of them! A LPR should be completed online each time you perform your own (or anyone else's) songs. By doing this whenever you perform your original material, you can earn APRA income. Similarly, if you hear your material being broadcast on community radio you should self-report in case that particular broadcast was not part of the station's survey period.

TIMING OF PAYMENTS

APRA used to distribute every six months, however, from August 2011, APRA will start to make royalty payments on a quarterly accounting basis. This is a phased introduction, with some areas – e.g. commercial television – to follow in 2012.

OVERSEAS INCOME

Most Australian publishers insist on acquiring world rights when signing writers. (This is of course negotiable but is certainly the natural desire of the publisher.) In order to administer their catalogue and represent their interests in a foreign territory, all major publishers have established an international network of affiliates. In the case of multinational publishing companies, the sub-publisher will usually be the local office of the parent company. Independent publishers will usually do a sub-publishing deal on a territory-by-territory basis with one of the Majors or come to some arrangement with another independent company.

Similarly, the collecting societies (APRA and AMCOS) have an international network of affiliate societies. In the United States there is no equivalent of AMCOS (except for the privately owned Harry Fox Agency) and there are three rival organisations (BMI, ASCAP and SESAC) that fulfil the APRA role. In the UK, PRS For Music operates both the equivalent of APRA and AMCOS.