

What's the Future for Songwriters and Publishers? Presentation by Donald Passman.

Passman is an entertainment lawyer at Gage, Tyre, Ramer & Brown, Beverly Hills. He is also the author of *All You Need to Know About the Music Industry*. More details on these points can be found in the latest edition.

Publishing.

- Basics. A copyright is a 'limited duration monopoly,' and a publisher helps a writer to exploit a copyrighted work.
- Ways to exploit musical copyright: mechanicals (CDs, downloads, ringtones), performances (television, radio, bars, arena, theme parks, elevators, etc.), synch licensing, print
- Performance Licensing. PROs (performance rights organizations) handle broad-based licensing for TV, radio stations, etc. (blanket licenses). The resulting big chunk of money is spread out between the members of each society.
- Webcasting. Two types. (1) non-interactive (radio on the internet, a specific song cannot be requested, examples are radios station streamed online, iTunes radio stations, etc.) (2) interactive (YouTube, for example, which includes user-generated content (UGC), another complex discussion).
- Synchronization. Always matches a song with a visual image (tv, film, etc).
- Other uses: video games. Fees are generally low due to the power of video gaming companies. Print (sheet music), other smaller uses.
- Broader Splits. Publishers generally split 50/50 w/ writers, though PROs pay direct.

Disruption in Publishing.

- Piracy massive. "It's really hard to compete with free," citing massive volumes on P2P v. iTunes Store. Technology has disrupted, but not offered a solution. Digital is nowhere near replacing physical sales levels. Retailers are in a vicious cycle, big-box retailers cutting inventory which in turn reduces CDs. "We're in an awkward adolescence at best."
- Publishers are faring better than record labels. Part of the reason is less overhead, employees, warehouses, etc, "leaner operations to begin with." Also, a lag time in royalty delivery delays some of the decline, among other reasons.
- But downward pressures are happening, synchronization issues among them. Advertising levels have decreased, Hollywood is paying less, macroeconomic declines are problematic, "the publishers are starting to feel it."

Licensing details.

- Compulsory licenses. Yes, copyrights are a monopoly, though compulsory licenses require that licenses are granted in certain situations. Mechanicals are the biggest; anyone who wants to use publishing for recordings has access (at rate of 9.1-cents per composition; or 1.75-cents per minute).
- Controlled composition clause. When publishing and recording license is held by the same party, deals sub-compulsory can be created. A very complicated area (read the book!)
- Ringtones. On the decline, somewhat of a fad, though it has been offering lots of revenue to publishers. Overseas markets offer the greatest strength overall in this category.

- Non-Interactive. Performance license to ASCAP, BMI, pretty well settled on the publishing side.
- Interactive streaming. Battle over mechanical v. performance streams, this confusion was cooling entrants, a major disincentive. Resolution, performance gets 5-6 percent of revenues. On the mechanicals (HFA, CMRRA), payouts according to rather complicated formulas, stipulations, etc.
- Tethered downloads. Limited use, a protected download that disappears over time. This requires mechanical payments, though PROs have attempted to seek a classification as a performance.
- Video streams. No compulsory licenses for a video, back to one-off negotiations. Payments generally routed through the label through the label to the publisher.
- UGC (user-generated content), not too much money here, based largely on affinity issues and targeting problems for advertisers. Similar to video streams, royalties are generally routed through labels back to publishers.
- Print. Publisher gets 20 percent of retail price. Lyrics-only sites, the deal is 50 percent of advertising revenue, not serious money. When lyrics are used in books or novels, often a flat fee depending on the use.
- Video games. Royalties often low, gaming companies have lots of clout. Only real royalties are from music-focused games, like *Rock Band*.

Music as an industry, as an art form.

- Music has always existed, seems "programmed in our genes," "I don't think it's going to go away," though next generation of music industry could start to look like the television industry (incredibly diverse, diffuse with lots of channels and smaller players contributing to a larger pie.)
- The future out of this flux? Total ubiquity, ie, getting music everywhere, anywhere on a subscription basis could work. That would make ownership unnecessary, though current challenges come from delivery, rights negotiations, lots of other challenges