

Music Streaming in 2021

A Guide to Copyrights, Royalties, and Live Streaming

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Roadmap

- How do copyrights work in the music space
- What kinds of royalties are relevant?
- How do streaming royalties work in 2021?
 - Including recent events like
 - D’Nice’s “Home School”
 - BTS’ “Bang Bang Con”

Intellectual Property

- Trademarks—Brands
 - McDonalds, Nike
- Patents—Novel Inventions
 - First iPod
- Copyrights—Works of Authorship & Artistic Expression
 - Literature, Paintings, Music

Copyright

- What: legal right that gives a creator of an original work the exclusive right to decide whether, and under what conditions, the work may be used by others
- How: “Fixed in a tangible medium of expression”

Copyright Rights...Rights

- Distribution
- Reproduction
- Public Performance
- Digital Transmission
- Public Display
- Derivative Works

Instant vs. Registered

- Why Register?
 - Presumption of Ownership
 - Ability to Enforce via Lawsuit
 - Statutory Damages, Fees, and Costs of Suit

Copyrights:

What Happens When You Create a Song

- **Rights You Get**
 - Distribution
 - Public Performance
 - Digital Transmission
 - Public Display
 - Reproduction
 - Derivative Works
- **What Happens**
 - You become the publisher
 - Multiple writers determine their split
 - Potential Royalties are generated
 - Performance
 - Mechanicals
 - Synch

Copyrights in Music



Copyrights in Music

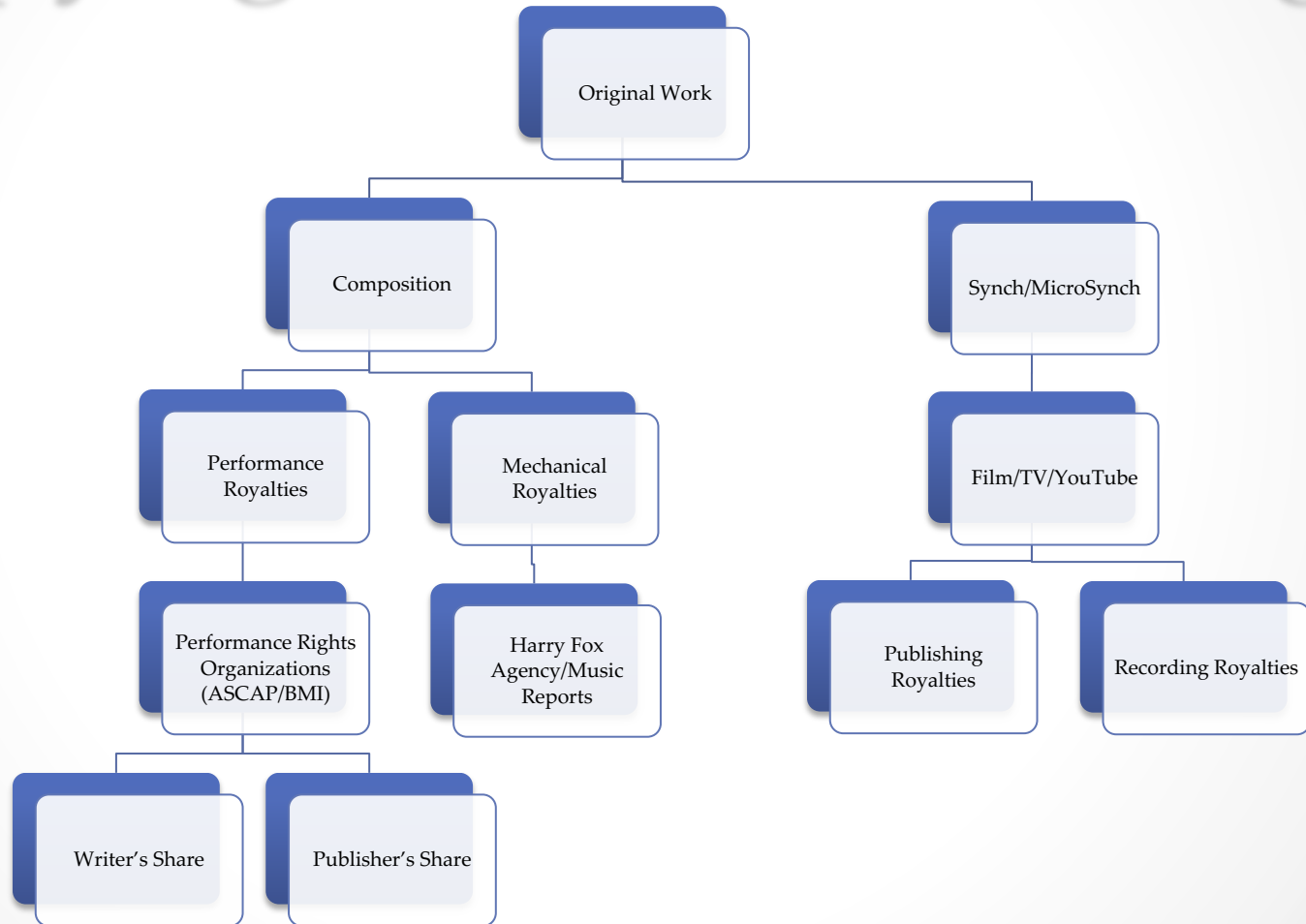
Composition

- Underlying musical composition
 - Music
 - Lyrics
- Owned by songwriters

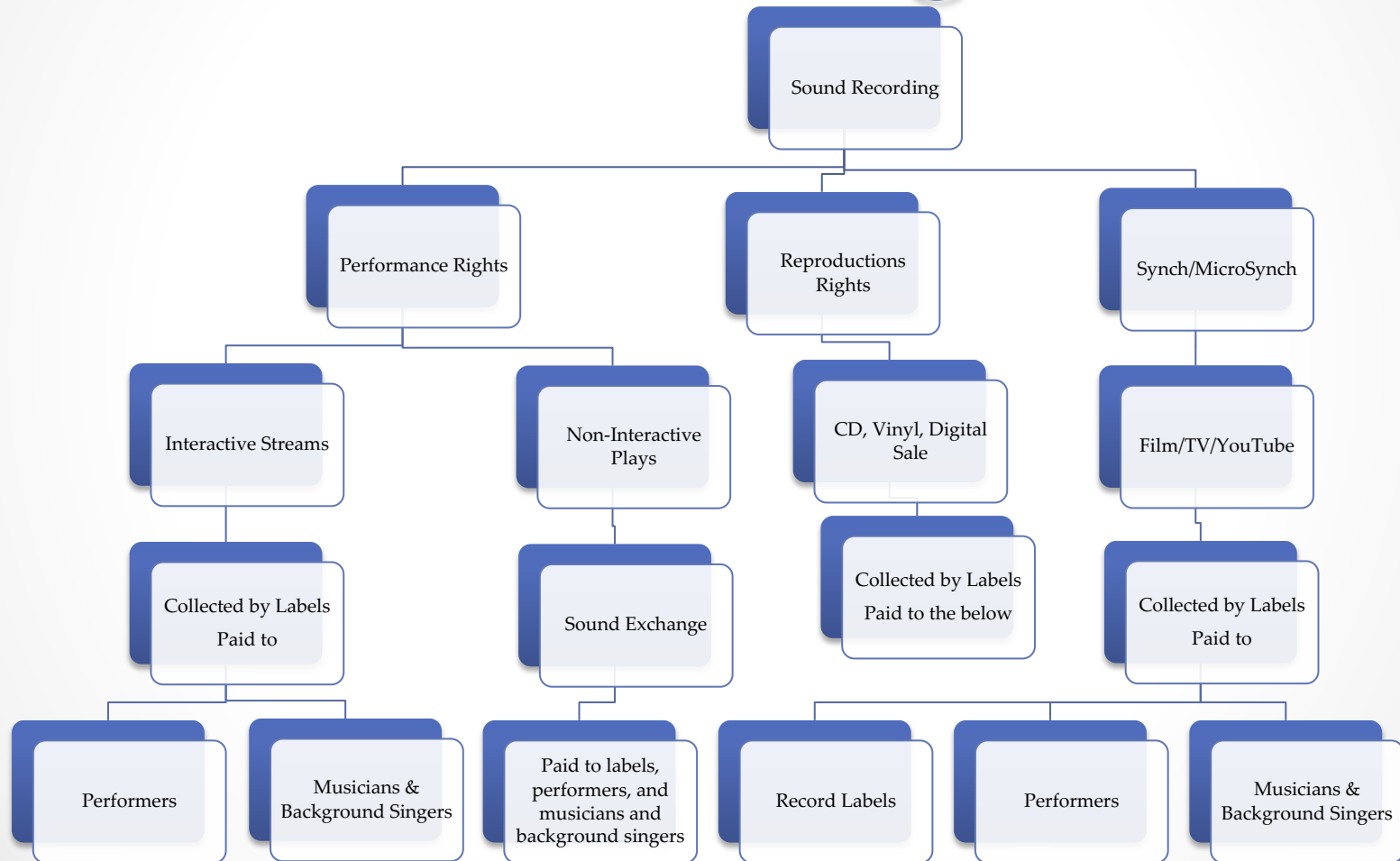
Recording

- Physical record of a musical performance that can be played back/reproduced
- Owned by whoever paid for studio time

Copyrights in Publishing



Copyrights for Sound Recordings



Digital Music Distributor

- Helps independent artists and labels get their music on major online stores and streaming sites worldwide (iTunes, Apple Music, Spotify, etc.)
- Collects mechanicals and public performance royalties

Royalties

Types of Royalties

- Public Performance
- Mechanicals
- Synchronization Rights

Performance Rights

- License fee paid out anytime someone plays your music publicly, for commercial purposes (money)
- Venues
 - Restaurants
 - Bars
 - Clubs
 - Television
 - Music streaming services
 - Radio

Performing Rights Organizations

- BMI
 - Broadcast Music, Incorporated
- ASCAP
 - American Society of Composers, Authors, and Publishers
- SESAC
 - SESAC
- GMR
 - Global Music Rights

What Do PROs Do?

- Collect Income on behalf of songwriters & publishers when music is publicly broadcast
- Who do they collect from?
 - Radio
 - Interactive Radio (Pandora)
 - Streaming Services (Spotify, Apple Music)
 - Clubs
 - Bars & Restaurants
 - Websites
 - TV
- What don't they collect?
 - Mechanicals, Synch
- Estimates charge: 16%-18% off the top

Mechanical Royalty

- What
 - A royalty paid when your song is reproduced—also known as "Compulsory License"
- Who collect
 - Harry Fox Agency, who pays publisher
- How much do they charge: 11.5-ish-%
- Who pays
 - Record labels
 - Streaming Services
 - Cover-ers

Synchronization Rights

- What
 - Music license allowing the licensee to synchronize music with some kind of visual output
 - Film
 - TV
 - Video
 - Ads
 - Videogames
 - Movie trailers

Samples

- “Sample”
 - The art of taking any sound, making a digital copy, and incorporating it into your own work
- Getting permission to use a sample is called “Sample Clearance”
 - Don’t need sample clearance if
 - Just using the sample for personal, in home use
 - You’re using the sample in only live shows
 - Venue-paid
 - Substantial change—tricky
- Need permission from the owner of the Master AND the Composition
 - Usually can’t get this until you finish a track
- *Replays*

Sample Fees

- Negotiated individually
- Record company may want a royalty: 2%-8%
- Publishers may want a piece of the copyright: 10%-50% (including co-administration)
- Both may want cash fees or advances

Fair Use

- Defense against a claim of copyright infringement
- 4 Factor Test
 - Purpose & Character of the Use
 - Trying to make money-----Non-profit education
 - Nature of the Copyrighted Work
 - Fact vs. Fiction
 - Amount and Substantiality of the Portion Used
 - Effect on the Potential Market for or Value of the Copyrighted Work
- Not a rule that allows you to
 - “Use two minutes”
 - Just give a “shoutout” or credit

Live Streaming



What is Live Streaming?

- Live Streaming
 - The broadcasting of live video to an audience over the internet
 - Can also include the publication of pre-recorded video as “live” content
- What do you need?
 - Platform
 - Permission for public performance right
 - Permission for synchronization right
 - Audience?

COVID Livestreams

- BTS' Bang Bang Con
 - 750k tickets sold for roughly \$20 million
- Travis Scott's "Astronomical" concert on Fortnite
 - 27.7 million unique participants
- Diplo
 - Press release said artists would be paid for their music, plus
 - Put the sets on YouTube, with royalties going to rights holders
- D-Nice's "Home School" on Instagram Live

Live Streaming Platforms

- Free
 - Instagram & Facebook Live, Zoom, Google Hangouts
- Free to Play (viewers can contribute)
 - Twitch, YouNow, Caffeine, Periscope, YouTube Live, Sessions
- Ticketed/Paywalled
 - Run the World, Moment House, Stageit, Veeps, Key, Crowdcast, Patreon
- VR
 - AltspaceVR, theWaveXR, MelodyVR, Sansar, Tribe XR

Terms of Service

- Terms of Service (the ones you don't read) are a contractual agreement
- You agree to license a host of your legal rights to the company and their affiliates
 - Copyright
 - Trademark
 - Publicity Rights
- Represent all necessary legal rights to content you upload or live stream
- Indemnification

YouTube

- “Content ID”
 - YouTube’s internal identification technology
 - Scans audio content within a video and matches it with an internal library of reference files—copies of sound recordings and metadata.
 - Supplies PROs (or intermediaries) with ‘usage reports’
 - If uploading to YouTube, best to include precise metadata on artist, composer, and publisher

Facebook & Instagram

- Have a variety of licensing agreements in place which are “confidential”
- Don’t supply PROs with any of their own data
- Royalties paid out using “analogies,” meaning comparative percentages
- Have a pre-licensed music library called “Sound Collection”

Facebook & Instagram

- Music in stories and traditional live music performances (e.g., filming an artist or band performing live) are permitted.
- The greater the number of full-length recorded tracks in a video, the more likely it may be limited (more below on what we mean by “limited”).
- For that reason, shorter clips of music are recommended.
- There should always be a visual component to your video; recorded audio should not be the primary purpose of the video.

Twitch

One of the largest growing platforms during COVID

Got 2,500 DMCA takedown notices in one week in June from the RIAA (Recording Industry Association of America)

Sony, Universal, Warner, Atlantic, RCA

Started using Audible Magic to search user generated content

Has agreements with PROs, but not labels

Twitch

Types of Music Content

In the sections below, we describe some common types of music content, along with some information about whether you may or may not share that content on Twitch.

Here are some example types of music content you may use in Twitch streams and on-demand content:

- **Music Owned By You** – Original music which was written by you and either recorded or performed live by you, and for which you own or control all rights necessary to share the music on Twitch, including the rights to the recording, performance, and to the underlying music and lyrics. Please remember that if you have a contractual relationship with an organization that controls rights to the content you create, such as a record label or publishing company, you should make sure that you are not in violation of that relationship by sharing that music on Twitch.
- **Music Licensed To You** – Copyrighted music owned in whole or part by someone other than you, if you have secured a license to share it on Twitch from the relevant copyright holders.
- **Music Streamed Using Soundtrack by Twitch** – Music added to your live streams using [Soundtrack by Twitch](#)

Here are some example types of music content you may not use in Twitch streams or on-demand content:

- **Radio-Style Music Listening Show** – A Twitch stream or VOD which focuses on playing music that is not owned by you and is not licensed for you to share on Twitch.
- **DJ Set** – Playing and/or mixing pre-recorded music tracks which incorporate music, other than music which is owned by you or music which is licensed for you to share on Twitch.
- **Karaoke Performance** – Singing or performing to a karaoke recording other than an in-game karaoke performance that is licensed for you to share on Twitch.
- **Lip Synch Performance** – Pantomiming, singing, or pretending to sing to music that is not owned by you or is not licensed for you to share on Twitch.
- **Visual Music Depiction** – Lyrics, music notation, tablature, or any other visual representation of copyrighted music other than (1) music owned by you, or (2) music which is licensed for you to share on Twitch.
- **Cover Song Performance** – Performance of a song owned by someone else, with the exception of a live performance in your Twitch stream. If you do perform a cover song in a live Twitch stream, please make a good faith effort to perform the song as written by the songwriter, and create all audio elements yourself, without incorporating instrumental tracks, music recordings, or any other recorded elements owned by others.

Public Performance

- Public Performance License
 - Agreement between a user and owner of a composition that grants permission to play the song in public, for commercial use, online, or on the radio
- The primary PROs have agreements with the primary social media platforms
 - ASCAP, BMI, SESAC, GMR
 - YouTube, Facebook, Instagram, TikTok

Synchronization License

- “Synch License”
 - Agreement between a music user and a copyright holder that grants permission to synchronize audio with video
- None needed if
 - Live streaming with no pre-recorded copy or downloadable record
- Otherwise needed and must be negotiated

Which License?

- If stream that is not recorded, archived, or repurposed
 - Hosting platform should acquire a performance license from artists' PROs
 - Paid to songwriters and publishers
- If saved and synched with music for later use
 - Platforms should purchase synch licenses and mechanicals
 - Paid to record labels, artists, song writers, and publishers

Fundraisers: JUST SAY NO!

- Charitable Solicitation Registration
- Instagram has a built in platform which is fine

Trademarks

- Be careful about trademark endorsement so as not to imply a relationship or cause consumer confusion