# Eight Types of Publishing Deals: An Overview

People often speak of publishing deals in a generic way, which implies there is only one kind of publishing deal. In fact, there are a number of different kinds.

But first, some historical background. In the very early days of music publishing, songwriters simply sold their songs to music publishers for a flat amount. Later, as songwriters became more business savvy and gained a little more negotiating leverage, a new kind of contract evolved, consisting of three basic elements:

1. The songwriter would assign *all copyright ownership* of the songwriter's songs to the publisher;
2. The publisher would have the right to try to get the songs commercially exploited; and;
3. The publisher would agree to pay royalties to the songwriter based on income received from third parties from any commercial exploitation of the songs.

Although this "traditional" type of deal still widely exists today, various newer kinds of publishing deals have evolved over the years.

Incidentally, when I use the term "publishing deal" here, I'm using the term very broadly, to refer to any kind of deal whereby a third-party individual or company (other than the songwriter) obtains the right to receive a share of the songwriter's music publishing income. For example, mechanical royalties from the use of songs on records, or public performance income from BMI and ASCAP for radio airplay, or synchronization income from the use of songs in films, television shows, computer games, etc.

For most people, the subject of music publishing is very confusing. Part of the problem is that there's a lot of haziness and ambiguity in music publishing terminology.

That same ambiguous terminology, when used in *contracts,* often leads to legal disagreements and sometimes litigation when the parties disagree about how the terminology should be interpreted. For example, when a contract refers to "music publishing income," it needs to be made clear in the contract whether they're talking about the *combined music publisher /songwriter income* from music publishing, or just the *music publisher's share* of that income.

## The Different Kinds of Deals

The eight kinds of publishing-related deals today are:

1. The "Traditional" Publishing Agreement
2. Single Song Agreements
3. Co-Publishing Agreements
4. Step Deals
5. Administration Agreements
6. Income Participation Agreements





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7. Music Placement Agreements
8. Sub-Publishing Agreements

These deals vary from one to the other in many respects, most importantly the following:

- What percentage of copyright ownership, if any, will be given to the publisher;
- What percentage share of future publishing income will the publisher get;
- What functions will the publisher will perform; and
- How long the agreement will remain in effect.

For example, the first four kinds of deals mentioned above involve the transfer of at least part of the *copyright ownership* of the songs. Not so, usually, with the last four kinds of deals.

Of the eight kinds of deals, there is usually one particular kind of deal that that will be the most appropriate for a particular situation. By the same token, that same contract will likely be totally inappropriate for *other* types of situations. Therefore, I will outline below the situations which each kind of deal is particularly appropriate for.

Here's a thumbnail sketch of each of the eight kinds of deals.

## 1. The Traditional Publishing Deal

First, of all, the term "Traditional Publishing Deal" is not customarily used in the music industry. I'm only using that term here to distinguish this type of deal from the others. This kind of contract is sometimes referred to as an "Exclusive Songwriter Agreement," or simply as a "writer's deal."

**Typical Scenario.** This kind of deal dates back to the days of Tin Pan Alley. Today it's used when a songwriter and a publisher want to have a long-term relationship for all of the material that the songwriter will be writing during the duration of the contract.

This type of deal is usually not used when the songwriter is signed to a record deal. (See "Co-Publishing Deals" below.) But, I occasionally come across exploitative independent labels which require their artists to sign this kind of deal.

**Material Covered by the Deal.** This kind of deal will cover material written during the term of the contract, and sometimes may also include songs written before the contract was entered into. Usually the contract will require the songwriter to deliver a certain number of new original songs to the publisher during each year of the contract.

**Copyright Transferred.** Normally, the writer grants to the publisher 100% ownership of the *copyright* of the songs covered by the contract.

**Income Sharing.** The publisher receives all publishing income from third parties, then pays the writer 50% of that income. The publisher here is getting a larger share of the publishing income than in most of the other types of deals mentioned below. That's because, with this kind of publishing deal, the publisher's responsibility, theoretically at least, is to proactively promote the songs involved and to try to maximize the income earned from the songs. On the other hand, in many of the other types of publishing deals discussed below, the publisher's role is much less promotional and proactive in nature, and much less all-encompassing, and as a result the publisher gets a much smaller piece of the pie.

**Term.** The agreement will normally be for an initial one-year period (with the writer obligated to deliver a certain number of songs to the publisher in that one year). Then the publisher will have several (in the range of three to six) consecutive one-year options following that initial one year.

Incidentally—and this is very important—when I refer to the "term," I'm referring to the time during which the songwriter is obligated to *write songs* for the publisher, and *not* how long the publisher will have *rights* in those songs. The term of the agreement may be only a few years, but the publisher will be the *owner* of those songs for a much, much longer period of time, often for "the life of the copyright," which will be much longer than any of the individuals involved will be alive.

**Advances.** The larger established publishers typically pay a recoupable advance to the songwriter for the first year (payable in installments), often in the range of $15,000 to $100,000. Then an additional advance is paid each year the publisher exercises its option to continue the contract for another year. Normally the contract will contain somewhat complicated provisions for how the amounts of the advances will be calculated for the follow-up years.

With small publishers, often little or no advance is paid.

## 2. The Single Song Agreement

**Typical Scenario.** Basically, this type of agreement is based on the same concept and structure as the Traditional Deal mentioned above, but involves only one (or several) of the songwriter's *pre-existing* (already written) songs. Sometimes a relationship between a songwriter and publisher will start out this way and later they will enter into the traditional type of deal.

**Material Covered by the Deal.** Even though the title would imply that it's only for one song, this kind of agreement is sometimes used for several songs at the same time.

**Copyright Transferred.** Same as with the Traditional Deal.

**Income Sharing.** Same as with the Traditional Deal.

**Term.** Same as the Traditional Deal, but in the case of the Single Song Agreement it's much more likely that there will be a reversion clause. Typically the contract will (or at least, *should*) provide that the copyright ownership will revert to the songwriter if the publisher isn't able to get the song recorded by a signed third-party artist, or used in a film, television program, etc. within twelve or eighteen months.

**Advances.** Often the publisher will refuse to pay an advance. However, even when advances are paid, they're usually very small, typically in the range of $200–$500 per song.

## 3. Co-Publishing Deals (also known as Co-Pub Deals)

**Typical Scenario.** This type of agreement is typically used for writers who are in groups already signed (or just about to be signed) to a record deal and covers the original material on the group's upcoming records. Normally all of the members of the group who are songwriters will be signed to this type of agreement with the same publisher.

Just to be clear, I'm talking about a publishing deal with a publishing company *not* affiliated with the record company. Today, it's much less likely than it used to be that a record company will demand a publishing deal as part of a record deal, although some indie labels still do so—for example, some independent labels in the rap and Christian music genres.

**Material Covered by the Deal.** Will include all the original songs on the group's first record. Then the publisher will usually have the right to options on the original songs on anywhere from two to four of the follow-up albums (for a total of three to five albums). The exact number will depend on what the parties negotiate. Sometimes it's for all of the group's original songs on all future albums to be covered by the group's current recording contract.

**Copyright Transferred.** The songwriter normally transfers one-half of the copyright ownership to the publisher and retains the other one-half ownership. In other words, the song is co-published (the copyright is co-owned 50/50) by the third party publisher and the writer's own publishing company.

**Income Sharing.** Normally, the third party publisher will collect all income and then pay to the songwriter and the songwriter's publishing company 75% of all publishing income.

**Term.** As already mentioned, co-publishing agreements are usually for a certain specified number of (future) albums, rather than for a certain number of years.

**Advances.** Advances are almost always paid to the songwriter in the case of co-publishing deals. For groups newly signed to major label record deals, the initial advance from a major music publisher is often in the $75,000–$200,000 range and sometimes higher, with additional advances being paid if and when the publisher exercises its options for the follow-up albums. Those amounts have been going down substantially in recent uses as a result of declining record sales.

## 4. Step Deals

This type of deal is for situations where the songwriter isn't yet signed to a record deal, but is likely to be signed some time later. This contract will provide, in effect, that the deal will start out as the Traditional Deal, but will automatically transform into a Co-Publishing Deal if and when the songwriter is signed to a record deal.

## 5. Administration Deals (also known as Admin Deals)

**Typical Scenario.** This type of deal is used when the songwriter just wants a publisher to collect royalties and handle the various paperwork (for example, the BMI/ASCAP song title registrations, copyright applications, the issuance of licenses, etc.), and when the songwriter does not want or need a publisher to proactively promote his or her catalog of song. A good example of a company that does a lot of Administration Deals is Bug Music in Los Angeles.

**Material Covered by the Deal.** Most often this kind of deal covers all material written by the songwriter, or at least all material that the songwriter has not already committed to other publishers.

**Copyright Transferred.** No transfer of copyright (usually).

**Income Sharing.** Typically, the publisher will take 10% to 20% of the income, and the pay the rest to the songwriter and the songwriter's publishing company.

**Term.** Administration deals are normally in the range of three to five years.

**Advances.** For catalogs generating a modest amount of income, usually no advance is paid. For more profitable catalogs, usually an advance is determined on the basis of the income that has been generated in recent years by the catalog.

## 6. Income Participation Deals

**Typical Scenario.** This type of deal is a publishing deal only in the sense that it involves a share of future publishing income (there's no transfer of any actual copyright ownership). Usually this type of deal is used to cut someone in on a share of the publishing income; for example, to serve in effect as a "finder's fee" for having found a record deal for a songwriter. Very often the "income participant" is not even a real, functioning publisher.

**Material Covered by the Deal.** Highly negotiable and varies widely. May only cover the material on the songwriter's first album.

**Copyright Transferred.** No share of copyright is transferred. Instead the "income participant" is only entitled to receive a share of income.

**Income Sharing.** Varies widely, but often is in the range of 10% to 20%.

**Term.** Again, highly negotiable and varies widely.

**Advances.** No advance is involved.

## 7. Music Placement Agreements

**Typical Scenario.** This type of deal is used when a songwriter or publisher wants to find a company with the connections to get their material used in films, TV shows, etc. Companies which specialize in doing so are often referred to as "music placement companies," or "pitch companies." Although they often have a publishing wing, they function differently, and have a more narrow focus, than the typical music publisher.

Music placement companies often also represent record labels that want to get their masters used in films, etc.

**Material Covered by the Deal.** Often it's the songwriter or publisher's entire catalog. But sometimes the music placement company will cherry-pick certain songs for representation.

**Copyright Transferred.** No copyright is transferred, usually. But many Music Placement contracts say, in effect, that if the music placement company places any songs in films, TV shows, etc., the company will then become entitled to a specified percentage of the copyright ownership of those particular songs (usually akin to a co-publishing agreement).

**Income Sharing.** Typically they're in the range of 25%–50% of the income from any deals secured by the music placement company. Most often 50%.

**Term.** Often in the range of two to three years but in some cases they can be longer or shorter.

**Advances.** Usually no advance is paid but there are occasional exceptions.

## 8. Sub-Publishing Deals

**Typical Scenario.** This type of deal is between a U.S. publisher and a foreign publisher. For a cut of the income earned in the applicable foreign territories, the foreign publisher will collect the income in those territories, keep a specified share of that income, and then pay the balance on to the U.S. publisher. The U.S. publisher in this scenario is often a songwriter's own (self-owned) publishing company.

U.S. publishers enter into this kind of deal for two reasons: (1) To receive their money from foreign territories faster, and (2) Because a sub-publisher, being on the ground in the foreign territory, can carefully monitor the use of the publisher's music in that territory, and as a result will be better able to collect all monies actually earned in that territory.

And then there is the "black box" problem. In some foreign territories, only the publishers *based in those territories* are entitled to receive a share of the income earned in those territories. The balance—the amounts theoretically owed to publishers based outside those territories—is not actually paid to them. Instead, it is ultimately kept by the local publishers in those territories. Those monies are often referred to as "black box monies." And so, in some instances, entering into a sub-publishing agreement allows a publisher from outside a territory to collect monies which it otherwise would not be able to collect.

**Material Covered by the Deal.** Usually the entire catalog.

**Copyright Transferred.** No copyright is transferred.

**Income Sharing.** The foreign sub-publisher will normally take in the range of 15% to 25% of the income off the top, and then pay the balance to the U.S. publisher. The percentage taken by the sub-publisher will be significantly less for large, profitable catalogs.

**Term.** Usually in the range of three to five years.

**Advances.** The same situation as with Administration Deals.