

## Starting Your Own Publishing Company: An Eight-Point Checklist



I often encounter people who want to set up their own music publishing company, but don't know how to go about it. They often assume that the process is much more complicated than it really is.

I have found over the years that the subject of music publishing is one of the biggest sources of confusion for writers and artists. I once had a very well-known musician confide to me that after many years in the music business, she felt that she had a good understanding of every aspect of the music business *except music publishing*.

I think part of the reason for that is because many music publishing terms are confusing and not at all intuitive. The music publishing business has evolved over many years, starting in the late 1800's when sheet music was the only source of music publishing income. As a result, many music publishing customs in existence today are more a matter of historical accident than being inherently logical.

Before laying out the steps involved in starting a music publishing company, it's important to first talk briefly and basically about what a music publisher does, since the term "music publisher" is sometimes misunderstood by people new to the business side of the music business.

Sometimes people think that a music publisher's main function is to print sheet music. This isn't correct. In fact, most music publishers have an outside company handle the sale of their sheet music. Instead, a music publisher's main function is to get a songwriter's material used (for example, on records and movie soundtracks), and then to collect royalties for the songwriter from record sales, etc. The publisher also has other important functions, such as processing copyright applications and various types of contracts.

A music publisher is most accurately described as the owner (or, sometimes, one of the owners) of the copyright of a musical composition. As the copyright owner, it has the obligation, not to mention the self-interest, to perform the functions mentioned above (or in some cases delegating those responsibilities to other companies or individuals).

### **A Music Publisher Can Be Defined as a Person or Company Who:**

**Owns the copyright** of one or more musical compositions (not the recordings, but just the underlying musical compositions), *and*

**Takes care of all legal documents** authorizing the use of those compositions by third parties (for example, when a movie studio wants to use the song in a movie), *and*

**Receives all income** earned whenever third parties use any of the compositions in any way, and then pays to its songwriters their respective shares of the income received. The only exception is that ASCAP and BMI pay the songwriter *directly* the so-called "Writer's Share"

of airplay income. Other than that, all income is paid by third parties to the publisher. The publisher is then obligated to turn around and pay the songwriter his or her share of income from the song, in accordance with the terms of the publisher-songwriter contract.

Generally speaking, a publisher becomes recognized as being an “official” publisher by becoming a publisher member of ASCAP, BMI or SESAC (or, in the case of foreign publishers, a publisher member of an organization which is the equivalent of ASCAP, BMI, and SESAC in that foreign country).

Finally, in some instances there are *multiple* publishers involved in the ownership of a song. For more information about how that works, see “Eight Types of Publishing Deals: An Overview,” on page 272.

### Setting Up a Publishing Company

Although the formation of a music publishing company isn’t nearly as complicated as people often assume, by the same token it isn’t totally hassle-free. Before starting your own publishing company, you should realistically and carefully evaluate the reasons for doing so. Generally speaking, it only makes sense to start a music publishing company if you’re going to make some very serious efforts to market your material, or if your material is on records already commercially released (or very likely to be released in the near future).

If you decide to start your own music publishing company, you’ll need to take various steps including the following:

**1. Choose between ASCAP and BMI.** ASCAP and BMI are two separate organizations that serve the same function. They both collect licensing fees from certain users of original material (for example, radio stations and clubs). They then distribute those fees, or “royalties,” to publishers and songwriters in proportion to the amount of airplay each publisher’s/songwriters’ songs have received. The royalty amounts are based on the airplay monitoring systems which each of those organizations use.

No songwriter can be a member of both BMI and ASCAP at the same time and must choose between the two. In addition, a songwriter and his/her publishing company (if any) must belong to the same organization (BMI or ASCAP). For example, a BMI writer cannot be signed to an ASCAP-affiliated publisher; only to a BMI-affiliated publisher.

**Important:** You should be aware that for BMI, at least under their current rules, you can join as a *Writer* only—without also setting up a publishing company—and still collect both the *Writer’s* share *and* the *Publisher’s* share of royalties. You must fill out the *Writer’s* application appropriately; call BMI if it’s not clear to you how to do it. This applies only to BMI. In the case of ASCAP, you must belong as a *Publisher* in order to receive the “*Publisher’s* Share” of ASCAP royalties.

The membership fees for these organizations are different, so you’ll want to compare the two.

Since BMI and ASCAP have different procedures for calculating royalties, you may also want to obtain information from them before you choose between these organizations.

I'm often asked by songwriters which organization pays more. There are a lot of urban legends surrounding this issue. I've never seen any evidence that one organization consistently pays more than the other. There's only one scenario in which it's possible to truly compare the amounts paid with any degree of certainty. That is when a commercially successful song has been co-written by an ASCAP-affiliated writer and a BMI-affiliated writer. Yet, I've seen situations where the ASCAP writer/publisher were paid more, and other situations where the BMI writer/publisher were paid more.

One technique I often recommend when a songwriter client co-writes with other songwriters is to have one join ASCAP and the other join BMI. Then, if one of the writers/publishers is paid substantially less, he or she can go to his/her organization (whether ASCAP or BMI) and seek to have the amount bumped up to match the amount paid to the other writer/publisher.

Another consideration, aside from who pays more, is who can provide you with more services and assistance. You should compare the information in the ASCAP and BMI brochures as they apply to your particular circumstances and needs.

Both organizations can provide the valuable opportunity to perform at one of their showcases, which are normally well-attended by industry people. Taking into consideration the kind of music you play, you might want to ask ASCAP and BMI for specific information about the dates and locations of their showcases and get information about how to be considered.

You can obtain more information about these organizations at [ascap.com](http://ascap.com) and [bmi.com](http://bmi.com).

Incidentally, I haven't specifically addressed SESAC here. SESAC is a U.S. organization which generally plays the same role as ASCAP and BMI, but it's a much smaller organization. That being said, SESAC is certainly a valid option to look into as well.

**2. Choose and Clear the Name.** You should choose several alternate names for your publishing company, since your first choice may already be taken by another music publishing company. BMI or ASCAP—whichever one of those you choose to apply to—will require you to submit a list of several different names for this very reason.

You'll also want to obtain the membership application forms. There's one set of forms to join as a *songwriter*, and a separate set of forms to affiliate as a *publisher*. You'll need both if you're a songwriter and are starting your own publishing company. A songwriter who is acting as his/her own music publisher, is in effect wearing two hats—for example, Joe Schmoe (the songwriter), and Schmoe Music (the music publisher).

Before you send in the name clearance form to ASCAP or BMI, it's a very good idea to first check the publisher databases on the ASCAP and BMI websites and do some Google searches to see if there's a publisher already listed who is using the name you want to use. But this isn't a completely reliable process. One problem I've run into several times is when there's a publisher (most often a foreign publisher) whose company name is a foreign language name, but

when translated into English, is the same name as (or is too close to) the English language name my client wanted to use. Neither ASCAP nor BMI will allow you to use the English language equivalent of the other company's foreign language name.

You should also check to be sure that the names you're selecting can be used as a business name in the county and state where you are based, and also that the name does not infringe on any trademarked names.

It's also sometimes advisable to have a comprehensive computer trademark search done to be sure the new publishing company's name is totally clear, at least in situations where there's a substantial financial investment involved.

Before you submit your publishing company application to ASCAP or BMI, you might want to consider obtaining a federal tax ID number from the IRS as a substitute for your Social Security Number, so that you don't have to put your Social Security Number on the application or give it out to other music business entities.

*Also—and this is crucial—allow enough time before a record release to properly clear the publishing company name.* Sometimes it can take awhile to find a name that you like *and* that is available. Allow at least six to eight weeks before your artwork must be finalized. It's also a good idea to send in the documents to ASCAP/BMI by certified mail, return receipt requested, or by air courier (FedEx, UPS, et al.) and then monitor the progress. Otherwise, there's a risk that your paperwork will fall into a black hole and you may not realize it until it's too late.

**3. Decide on a Business Structure.** Some people think, when they see the term “publishing company,” that it is by definition a corporation. But a publishing company can either be an individual operating as a sole proprietorship, or a corporation, or one of the other kinds of legal entities which exist, such as a partnership or limited liability company (LLC).

So you must decide on how your publishing company is going to do business—whether as a sole proprietorship, limited liability company, corporation, general partnership, limited partnership, etc. Then have the necessary legal paperwork prepared and do the same things you would do if you were starting any other type of business: obtain a business license, a federal tax ID number, etc. You'll need to have some of this done by the time you submit your ASCAP or BMI publisher membership application, because the application will require you to provide business-related information (e.g., tax ID number) on your application.

If you're a sole proprietorship or partnership, you may need to file an application for a “DBA” (“doing business as”) name registration with a city, county, or state agency. (It varies from state to state.) Without a DBA registration, many banks won't allow you to open a checking account in the name of the publishing company.

**4. Miscellaneous Contracts.** There are many different types of contracts which can be involved in operating a music publishing company. If, for example, your music publishing company is going to be handling songs composed by songwriters *other than yourself*, there will need to be appropriate contracts signed between your publishing company and those

songwriters. Another example: if your publishing company is granting a mechanical license to a band, (authorizing the band to record and commercially release one of the songs owned by your company), a licensing agreement will need to be prepared.

Sometimes people who start a publishing company want to have an array of legal forms prepared at the outset, so that they will feel ready to do business. But as a practical matter, you should wait to have contracts prepared until you have an actual need for them, to avoid unwarranted legal costs. Otherwise, those forms may never be needed and may end up just collecting dust on a shelf.

**5. File Copyright Applications.** Be sure that all necessary copyright applications are filed with the Copyright Office for all songs being handled by your publishing company.

You may also need to have “copyright assignments” executed, transferring copyright ownership to your new music publishing company. In most situations, those documents should be filed with the Copyright Office.

**6. File Title Registration Forms.** Whenever a recording of one of your songs is going to be commercially released or broadcast, you should promptly submit a “title registration form” (also known as a “clearance form”) for that song with the performing rights organization which you are affiliated with (i.e., ASCAP or BMI). You can now do this online. This allows them to monitor the airplay of your song and to pay you royalties accordingly.

**7. Consider Possible Affiliations with Other Publishers.** You may want to consider entering into an administration agreement with a more experienced music publishing company, authorizing them to handle all your publishing paperwork in exchange for a percentage of your publishing income (typically around 10% to 15%). Though, if you haven’t yet had any commercial success, it’s often difficult to find a good solid music publishing company willing to administer your catalog. They normally won’t want to take on all of the work involved until there’s some cash flow from which they can take their commission.

If any songs in your catalog are going to be on records sold outside the U.S., you’ll want to consider entering into sub-publishing agreements with publishers in those foreign territories, or, instead, with a single publisher who has active operations worldwide. There are several reasons for doing so:

- The only practical way to collect mechanical royalties from records sold in some countries is to be affiliated with a publisher in those countries.
- If you have a publisher “on the ground” in those territories, they will be much better able to monitor sales there to ensure that you are paid some semblance of the amount of royalties you are entitled to; and
- Publishers in other territories will have a vested interest in helping promote your career there and they may be able to connect you up with labels, booking agents, and festivals in those locations.

**8. File any Necessary Tax Returns.** The specific tax returns you'll need to file from time to time will depend on the structure of your business (sole proprietorship, corporation, etc.).

### **Other Steps Possibly Needed**

The basic steps involved in setting up a music publishing company are mentioned above. There may be circumstances specific to your own situation which may require other legal or business steps to be taken.

Acting as your own music publisher does involve some time and expense. Hopefully, the guidelines suggested above, though not intended to be a comprehensive list of the steps required for every possible scenario, will nonetheless help you to decide whether the benefits of starting your own music publishing company will justify the time and expense involved.