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Tamera H. Bennett
Attorney at Law

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How The Money Flows

*The Bennett Law Office
counsels clients in the
areas of entertainment,
copyright and trademark
law matters.*

Every songwriter's dream is to see the fruits of their labor produce royalties. Often, new songwriters are unaware of the flow of the various income streams. To generate income, the right to use the song must be licensed. The Copyright Act (17 U.S.C. § 100 *et seq.*) grants the author of a work, or the author's assignee, certain exclusive rights. These rights include reproduction, preparation of derivative works, distribution of the work, public performance of the work, and the right to display the work publicly. The licensing of these individual rights leads to income in the form of performance royalties, mechanical royalties, synchronization royalties and print royalties.

As we examine each potential royalty, assume the song discussed has a single author who has assigned his copyright to a music publisher. Additionally, the writer has no unrecovered advances.

Performance royalties are earned when a song is performed on the radio, at a night club, or at a concert. Performance rights societies (ASCAP, BMI,

SESAC) collect the performance royalty from the sources listed above. Each songwriter and publisher must be a member of a performance rights society to be paid their royalty. The performance rights society will pay 50 percent of the royalty to the music publisher and 50 percent directly to the songwriter. Each performance rights society uses their own method for calculating the royalty earned. As a songwriter, you should investigate each organization's calculation method prior to deciding which organization will best represent your needs.

When a music publisher grants a license to a record label for an artist to record the song, the record label owes the publisher a mechanical royalty based on records sold. The music publisher, in turn, pays one-half of the mechanical royalty collected to the songwriter. The current mechanical royalty rate is 8.5 cents per composition, per album sold. This rate is adjusted every two years and will increase on January 1, 2006.

Continued on reverse ...

Contents:

How The Money Flows	1, 2
In The News	1
What Makes a Franchise?	2

In The News And At The Courthouse

Arrested Development

The "Fox" television network debuted a new comedy called "Arrested Development." The band Arrested Development has sued Fox for four counts of trademark infringement claiming likelihood of consumer confusion. The band is asking for an immediate halt to the use of its name, plus damages and attorney fees.

Can Destiny's Child Survive?

A \$200 million dollar lawsuit has been filed alleging that Beyonce Knowles, her father/manager, the group Destiny's Child, and the group's manager are liable for copyright infringement. The plaintiff asserts that Destiny's Child's hit "Survivor" infringes his song "Glorious."

Music Biz M & A's

In November 2003, Universal Music Group announced that it had reached an agreement to purchase Dreamworks Records. Although the terms of the agreement were not disclosed, the selling price for the record label is purported to be in the \$100 million range. Dreamworks is also shopping their music publishing assets for a price between \$200 and \$300 million.

Sony Corp. and Bertelsmann AG (BMG) signed a letter of intent to merge the two record companies. The merger would give Sony/BMG 25.1% of the worldwide recorded music market. The combined 2002 product sales figures for Sony and BMG are estimated at \$8 billion. The merger does not include the music publishing assets of either Sony or BMG.

Tamera H. Bennett
Attorney at Law
165A West Main Street
Lewisville, Texas 75057
972-436-8141
972-436-8712 fax
tbennett@tbennettlaw.com

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How The Money Flows, cont.

Each time you hear a song in a commercial, in an episode of your favorite television show, or in a film, a synchronization royalty is earned. "Sync" royalties are negotiated by the music publisher with the proposed licensee. The amount of the license fee fluctuates based on numerous factors including the product being sold, the territory, the amount of the song used, and the term of the license. Like mechanical royalties, sync royalties are paid to the music publisher. The standard is for the publisher to remit one-half to the songwriter.

Print royalties are paid when your song is printed as sheet music, in hymnals, and lyric re-prints. The music publisher will either self-distribute the product or enter into a license agreement with a print publishing house. The publishing house distributes the print product and pays royalties to the music publisher based on a percentage of the suggested retail selling price divided by the number of compositions included in the printed product. Traditionally, the songwriter could expect to receive a royalty from his music publisher falling between eight and twelve percent of the product's suggested retail price. Today, most publishers are paying the songwriter one-half of the sums collected just as they would for a mechanical or sync usage.

There are numerous other areas where compositions may be utilized to generate income. Mechanical, performance, synchronization and print royalties are the four largest income streams. Financially successful music publishers and songwriters must learn the manner and method of exploiting their works to increase the flow of their income stream.

What Makes A Franchise?

Burger King®, Kumon® and Jani-King®. What do these three businesses have in common? They are all franchises.

You do not have to be the size of a "Burger King" to be operating as a franchise. The fantastic business plan you have developed that you are now "licensing" or "offering for sale" to a few third parties may actually be a franchise.

Only three things are required for a business to be operating intentionally or unintentionally as a franchise. Those factors are (1) allowing a third party the right to use your trademark in conjunction with the product or service sold; (2) providing "know how" to the third party to help them operate their new business, and (3) the third party paying you \$500.00 or more during the first six months of your relationship.

So, you ask, what is so bad about being a franchise? There is nothing wrong with being a franchise. The problem occurs when the "unintentional" franchise is created and the requirements of the Federal Trade Commission and/or state laws governing franchises have not been met. The potential damages for non-compliance with FTC regulations include injunctions, return of any payments made by the third party to the unintentional franchisor, an asset freeze of the unintentional franchisor, and civil penalties up to \$11,000.00 per violation. State law penalties vary depending upon the jurisdiction.

For additional information, go to www.ftc.gov. This firm associates with legal counsel experienced in all areas of franchise law. If you believe you may be an unintentional franchisor or franchisee, please call our office to discuss the options available to you.