

Copyright Questions And Answers

Getting Money, Getting Credit

by Marc Dicciani

Part of my role as director of the school of music at the University Of The Arts is to teach music business classes. The subject of copyrights is a major element of those classes.

Students in my classes (and also musicians I meet at clinics, lectures, and out in the workplace) frequently ask me what a copyright actually is. Who owns and controls it? And who is entitled to earn income from recordings, performances, and arrangements of songs?

I get two questions specifically from drummers: “Why are the rhythms and fills that I create not considered part of the composition of a song that can be copyrighted?” and

“When my band creates original songs, we all contribute parts. But I’m told that since I didn’t write the words or the melody, I’m not entitled to any money from the song. How can this be?”

Drummers (along with other instrumentalists, and even singers) are often shocked when they read songwriting credits on a CD and discover that their name isn’t included. That upset is heightened when they realize that they’re not going to be receiving any money from the mechanical licenses of the songs when the CDs sell, or from the performance revenue when the songs are played on the radio or TV.

To better help you understand the ins and outs of copyrights, this article will examine what can be copyrighted, who is entitled to income from a copyrighted song, and what you can do to protect yourself and/or earn compensation for your contribution. As we begin, remember that copyright law is complex, and many facets can be confus-

ing. You should supplement what you learn from this article with your own research. (More about that later.)

Defining Terms

A copyright is a form of ownership of certain kinds of creative works (also called intellectual property), including songs. It’s usually given to the individuals who created those works. In short, it is the control of the exclusive right to make copies of a song, and, effectively, to make money from that song. The purpose of copyright law is not just to protect the authors of these works, but also to balance their rights with those of the general public.

Rights of the public, you ask? Yes! Once a work is made available to the public (through a recording, for example), ordinary citizens have certain rights to listen to, perform, and even record that music. However, they usually must pay fees to the copyright owners when a song is recorded and sold, and when it is performed. That’s the balance that the law aims to provide.

What Is And Isn’t Covered

Generally, songs contain lyrics, melody, harmony, and rhythm. Federal statutes most often afford protection to the two most widely identified of these components: melody and lyrics. Copyright attorneys say that there are good reasons for this. Melody and lyrics are the only parts of a song that survive over time, remaining consistent through a variety of performances and recordings in many different styles and genres. Also, those two parts constitute a completely performable unit by a single individual. That is, one person can sing the words and melody with no accompaniment. (Or, in the case of an instrumental version, one person can play the song on a solo melodic instrument.)

The same defense cannot be made as strongly for harmony and rhythm within a song. No matter how recognizable those components may become, they are still considered accompaniment. They’re part of the arrangement, not part of the

fundamental song. The song can easily be—and often is—performed or re-recorded with completely different accompaniment in a different style or interpretation.

The Issue Of Originality

In order for any of a song's components to be protected by copyright, they must be "sufficiently original." That's a very important legal phrase.

Harmony, rhythm, and accompaniment can sometimes be given copyright protection, but in most cases those elements don't meet the minimum criteria of being sufficiently original. This, unfortunately, often includes what the drummer plays. The drum part may be creative, have a great feel, and contribute to the song in a meaningful way. But it's probably *not* sufficiently original to meet legal copyright requirements.

Before you get upset, let me explain why this is a good thing.

There's A Reason

As a drummer, you may feel that what you're playing is *very* original. And sometimes it may genuinely be. But most times, a drum part is not original *enough* to claim copyright in it. After all, most of us learn by listening to our favorite drummers, and we often incorporate what we've learned from them into our own playing style.

When a person is said to own, or control, the copyright to something, that means that no one else can use it—in any context, for any reason—without the owner's permission. If every drum part to every song was protected by copyright, you couldn't ever play grooves or fills originated by Bonham, Gadd, Tony Williams, or Ringo without being legally required to pay those artists. Furthermore, since those grooves and fills were copyrighted as parts of specific songs, you'd have to play them exactly as they were recorded, *every* time you performed those songs. Also, you couldn't use them as a part of any other song or performance.

What this would mean, in all likelihood, is that every time you played or recorded any drum part on any song, someone would probably sue you for copyright infringement. The bottom line is, giving copyright protection to drum parts would effectively prohibit the authorship of new songs, because no drummer can create a

totally original drum part every time he or she plays.

All Is Not Lost

Even though drum parts may not be copyrightable, drummers can still earn credit and income from their contribution to a song. Let's say you're in an original band, and during rehearsals all of the bandmembers contribute to the writing of a new song. The bass player comes up with a bass line, the keyboard player picks out some chord changes, and you play a drum groove and add some other rhythmic accompaniment. Then, the lead singer and the guitarist start working with a lyrical idea, and they begin to construct a melody that is probably based on—or at least influenced by—what the rhythm section is playing.

As someone who has added ideas and musicality to this song, are you not entitled to some credit and money? Yes, you are—as long as all of the bandmembers agree.

If your band creates original material as a group—especially on a "jam" basis at rehearsals—it's a good idea to have a written agreement ahead of time regarding if and how you will share the credit and the profit from the songs. You should also agree on who controls the copyright and the licenses of the songs.

There is no one formula for such an agreement; it really depends on many different factors. Accordingly, I suggest that you hire someone to help lead the bandmembers through such a discussion. This could be a friend, an attorney, or anyone who knows enough about copyrights and publishing to clearly explain the issues and help the group create an agreement that they can all live with. This is especially important if the band, or the songs, become successful. As you may already know, success often breeds more problems than failure does.

There's More To Know

Copyright law and shared credits are among the most difficult aspects of the music business to understand. The statutes are always open to interpretation, and attorneys battle over these issues every day. Although it's not necessary for every musician to become an expert in copyright law, there are certain things that we all should be

Read All About It

Here are some resources to help you learn more about copyrights.

Books

Music Copyright For The New Millennium

by David Moser (Pro Music Press)

All You Need To Know About The Music Business

by Donald Passman (Simon & Schuster)

The Musician's Business And Legal Guide

by Mark Halloran (Prentice Hall)

Music Business Handbook And Career Guide

by David Baskerville (Sage)

Web Sites

www.copyright.gov: US Copyright Office

www.sunsite3.berkeley.edu/copyright/: copyright, intellectual property rights, and licensing issues

www.whatsthe download.com:

Downloading issues

Business Courses

Music-business courses are available at many colleges and universities. Many offer night or weekend programs.

aware of when it comes to knowing what rights we have, protecting those rights, and avoiding infringing on the rights of others.

There are a few very good, easy-to-read books on the subject of copyright law, several of which are listed in the sidebar to this article. In addition, many courses are available at local colleges and universities. Do a little homework, and you'll be much better prepared to receive your fair share of compensation for your musical efforts.

Marc Dicciani is the director of The School Of Music at The University Of The Arts in Philadelphia, where he teaches drumset and courses in music business. As an artist, he records and tours with guitarist Jimmy Bruno, and he has performed with Diane Schuur, Clark Terry, Joe Beck, Christian McBride, Doc Severinsen, Snooky Young, James Moody, Ray Parker Jr., and Lee Ritenour. Marc is also an artist/clinician for Yamaha, Sabian, Regal Tip, and Remo.

