

Exercise 10: Now that we understand what a copyright is and the exclusive legal rights attached to it, how does this all work in real life? Let's apply what we have learned by working through a few word problems. We'll discover and work through some additional copyright concepts as well.

To get our word problem started, let's meet Amber, Blake, Candice, and Don . . .

**Amber, a rising indie recording artist, is creating a three-song demo. She plans to use the demo to land a major label recording agreement. In her search for material, Amber records a record called "Don't Forget About The Music," with lyrics written by Blake and Candice and the music produced by Don.**

**Q1: Who owns the copyrights in the "Don't Forget About The Music" record? And Why?**

Answer: There are 2 copyrights in each recorded song, the musical composition copyright and the sound recording copyright. Accordingly, Amber, Blake, Candice, and Don, all have a copyright ownership interest in the record. Blake, Candice, and Don each have an interest in the musical composition copyright for the music and the lyrics. Amber and Don each have a copyright ownership interest in the sound recording for the recorded sound of the song.

**Q2: If Blake, Candice, and Don jointly own the musical composition copyright (i) who *controls* the musical composition and (ii) what are their *ownership percentages/song splits*?**

Answer: Per copyright law, the default rule is that joint authors (co-authors) in a copyrightable work have a joint and equal interest in that copyrightable work. What this means is that Blake, Candice, and Don (i) jointly control the whole musical composition (not just control of their respective contributions) and (2) each have an equal ownership in the musical composition as well.

Because Blake, Candice, and Don each jointly own the whole musical composition, each can license the musical composition on a non-exclusive basis, so long as they pay the other joint authors their respective shares of any earnings.

If Blake, Candice, and Don do not wish to have an equal ownership interest in the musical composition, they will all need to agree on the respective ownership percentages – which can be achieved through a **written split sheet**, signed by Blake, Candice, and Don. For example, if everyone agrees that the splits should be Blake (20%), Candice (30%), and Don (50%), they should use a written split sheet to formalize these percentages. Please note that a song split total must always equal 100%, no more and no less. [A great online and free resource for split sheets is [www.songsplits.com](http://www.songsplits.com)]

**Q3: If Amber and Don jointly own the sound recording copyright, who controls the sound recording?**

Answer: Per copyright law, the default rule is that joint authors (co-authors) in a copyrightable work have a joint and equal interest in that copyrightable work. What this means is that Amber and Don (1) jointly control the whole sound recording (not just control of their respective contributions) and (2) each have an equal ownership in the sound recording as well.

Because Amber and Don each jointly own the whole musical composition, each can license the sound recording on a non-exclusive basis, so long as they pay the other joint author their respective shares of any earnings.

**Q4: Amber has a change of plans and now wants to sell the song on iTunes and not use it just for demo purposes. What does this mean for Blake, Candice, and Don's copyright ownership in the song?**

Answer: As we learned from Q1, Amber, Blake, Candice, and Don each have a copyright interest in "Don't Forget About The Music." What we also learned from the Copyright section of the workbook is that copyright owners have exclusive rights that they can transfer or license to others.

Amber does not have a copyright interest in the musical composition (i.e. the music and the lyrics), therefore, she has to get a license (authorization) from the copyright owners of the musical composition - Blake, Candice, and Don- in order to reproduce and distribute the composition on I-tunes as incorporated in the record. She can obtain this permission through a mechanical license. Blake, Candice, and Don, will be entitled to mechanical royalties from Amber's I-tunes sales, each receiving a royalty amount defined by their writer shares [See Q2]. As we've learned from the Copyright section in the workbook, mechanical royalties are one form of music publishing revenue that Blake, Candice, and Don can generate from their rights in the musical composition.

Amber does have a copyright interest in the sound recording, which she jointly owns with Don. Because joint authors have a joint interest in the whole of the copyrightable work (and not just in their particular contributions), Amber does not need Don's authorization to reproduce and distribute the sound recording on I-tunes, however she must account to Don his equal share in the earnings generated from the I-tunes sales. However, it's probably best that Amber gets Don's permission to avoid any conflict surrounding the use of the sound recording. In turn, because Don is a joint author in the sound recording and he has not transferred his rights to Amber (i.e. via a copyright transfer that may come in the form of a producer agreement), Don can also reproduce and distribute the recording (on a non exclusive basis), so long as he accounts to Amber her respective share of any earnings. If either Amber or Don, want to license the sound recording on an exclusive basis, both Amber and Don must agree to the exclusive license.

**Q5: The “Don’t Forget About The Music” record becomes a viral hit, and now a shoe company wants to license the record and place it in a television commercial. Who can authorize the use of the record to the shoe company: Amber, Blake, Candice, or Don? How many licenses will the footwear company have to get?**

**Answer:** There are 2 copyrights in each recorded song, the musical composition copyright and the sound recording copyright. Accordingly, the shoe company will need to get two licenses: (1) a synch license for the right to synchronize the musical composition in timed relation to an audio-visual and (2) a master use license to synchronize the sound recording in timed relation to an audio-visual. The audio visual in this instance is the commercial footage.

Blake, Candice, or Don can authorize the synch license for the musical composition. As we’ve learned from the Copyright section in the workbook, synch royalties are one form of music publishing revenue that Blake, Candice, and Don can generate from their rights in the musical composition. Amber and Don can authorize the master use license for the sound recording.

**Q6: A record label hears “Don’t Forget About The Music,” loves it, and now wants to sign Amber to a recording agreement. The record label asked Blake, Candice, and Don to create a new song for Amber’s upcoming album; it’s called “Oh, We Love the Music!” Assuming that Blake and Candice co-wrote the lyrics and Don produced the record, what authorizations does the record label need from Amber, Blake, Candice, and Don in order to use and own the recording?**

**Answer:** There are 2 copyrights in each recorded song, the musical composition copyright and the sound recording copyright. Generally, the record label will not seek ownership of the musical composition (and the publishing rights) but it will need a license to reproduce and distribute the musical composition and will do so via a mechanical license from Blake, Candice, and Don. We’ve learned from the Copyright section in the workbook, mechanical royalties are one form of music publishing revenue that Blake, Candice, and Don can generate from their rights in the musical composition. What you’ll learn from the Maintenance section is that when mechanical royalties are paid to Blake, Candice, and Don, their publishers will collect their respective mechanical royalties – not their PROs (i.e., ASCAP, BMI, SESAC). For now, Blake, Candice, and Don are self-published and are not attached to another publisher – so the label will pay each their mechanical royalties directly. Please note a label can only pay mechanical royalties if Blake, Candice, and Don have established their song splits – so get those split sheets done! We’ll throw publishers in the mix on the question ahead.

If the record label wants to own the sound recording (i.e., the Master), it will need to acquire ownership of the Master from Amber, which will take place via a work for hire and/or assignment in Amber’s recording agreement. The label will also need to acquire Don’s copyright interest in the Master, which will take place via a work for hire and/or copyright assignment in a producer agreement.

**Q7: “Oh, We Love the Music!” becomes a huge success when released by Amber’s record label, and Blake, Candice, and Don are getting more music placements and phone calls from music publishers are rolling in. Blake and Candice are offered co-publishing agreements and Don is offered a publishing administration agreement. What is the difference between a co-publishing agreement and a publishing administration agreement?**

**Answer:** A co-publishing agreement is when a songwriter (note: producers are also called “songwriters”) agrees, in writing, to assign a portion of his/her copyright (and revenue) to another person or entity in the songwriter’s musical compositions. As a songwriter, a co-publishing agreement is not to be taken lightly – in most cases, once a songwriter assigns a portion of his/her copyright interest to another person or entity, the songwriter will not get those rights back for quite some time or ever. Be careful with these deals!

A publishing administrative agreement is when a songwriter (note: producers are also called “songwriters”) retains 100% of his/her copyright but agrees, in writing, that another person or entity can control the administration of the copyright (i.e., registrations, licensing, collection of revenue, etc.) and receive a percentage of publishing income. An administrative agreement is less aggressive - in terms of copyright ownership - than a co-publishing agreement but you want to be careful with these agreements as well!

**Q8: Blake, Candice, and Don have all entered into their respective publisher deals. A video game company wants to use “Oh, We Love the Music!” in its next game release. What copyright authorizations does the video game company need to use the recording and who can authorize this use?**

**Answer:** There are 2 copyrights in each recorded song, the musical composition copyright and the sound recording copyright. Accordingly, the video game company will need to get two licenses: (1) a synch license for the right to synchronize the musical composition in timed relation to an audio-visual and (2) a master use license to synchronize the sound recording in timed relation to an audio-visual. The audio visual in this instance is the video game.

Blake, Candice, and Don’s publishers can authorize the synch license for the musical composition. Each person’s publisher will license the use of the musical composition on behalf of each songwriter’s respective copyright interest in the music compositions (note: remember split sheets!). For example, if the video game company wants to pay \$10,000 to license the musical composition and Don has a 50% writer’s share, Don’s publisher will license the musical composition on behalf of Don’s copyright interest and will receive \$5,000 (50% of the total fee), to be split between Don and his publisher, per his administrative agreement.

Amber’s record label, which acquired the Master rights from Amber and Don, can license the master to the video game company.