

SoundExchange

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Fact Sheet

SoundExchange collects and distributes the digital public performance royalty, which means performers and labels get paid for digital plays of their music. In 1995, Congress passed Digital Performance Right in Sound Recordings Act, which granted a performance right for the digital transmission of sound recordings. Previously, US copyright law contained no provisions for performance right in sound recordings. SoundExchange is the designated non-profit organization that collects the license fees and distributes royalties to those whose recordings were played digitally. Payees include the performer, non-featured artists and the sound recording copyright owner (most often, a label).

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How SoundExchange works

SoundExchange collects and distributes royalties from statutory licenses, including:

- Digital cable and satellite television services (Music Choice and Muzak)
- Noninteractive "webcasters". This includes webcasting stations that are just available on the internet — for example, soma.fm or Pandora — as well as the webcast transmissions of FCC-licensed radio stations — for example, the webcast of Seattle station KEXP.
- Satellite radio services (XM and SIRIUS)

These royalties are then distributed directly to the sound recording copyright owner (usually the record label) and the performer. The featured performer gets 45 percent, and the SRCO receives 50 percent. The non-featured performers receive the remaining 5 percent, which is distributed via a royalty pool managed by AFM and AFTRA.

Two important notes that are good for musicians: SoundExchange payments to record labels and artists are made simultaneously but separately. This means that artists' royalties can't be diverted by its label and charged against any existing debt. Also, SoundExchange royalties are administered on a per-performance or pay-per-play basis, rather than the "sampling" method employed by other organizations.

Does SoundExchange cover downloads?

No. SoundExchange only covers performance rights. Download royalties are covered by the reproduction right in a sound recording which means the royalties are based on sales and passed from the download stores to the record label, which then distributes sales royalties to the artist as per the label contract.

How often are royalties disbursed to artists and copyright owners?

SoundExchange does disbursements twice a year — once in summer and once in the winter.

How is SoundExchange different from other royalty collection agencies?

It works under the same model as ASCAP, BMI and SEASAC, but it represents a license on a different work. There are two copyrights contained in each recording — one for the musical composition and one for that particular sound recording of the composition. ASCAP, BMI and SEASAC collect performance revenue for the owners of the copyrighted musical work (the song), i.e. music publishers, songwriters and composers. SoundExchange collects performance revenue for the sound recording copyright owner (usually the record label) and for the performers. They don't compete against each other — in fact, their work is complimentary.

For example, when Patsy Cline's version of the Willie Nelson song "Crazy" is heard on terrestrial radio, songwriter Willie Nelson receives a royalty from BMI, but Patsy gets nothing. However, when "Crazy" is played on satellite radio or webcast, Willie gets his royalty from BMI, but the estate of Patsy Cline also gets a payment from SoundExchange, as does the owner of that particular sound recording.

Why is it important for bands and artists to sign up with SoundExchange in addition to other performance rights organizations?

The internet has made it possible for independent artists to be heard by more listeners than ever before. This also means greater opportunities to be paid for their work, provided that they're included in SoundExchange's database of performers. It's an even better proposition for artists that have retained ownership of their own copyrights. In those cases, individual musicians are paid as both the featured performer and the SRCO. Additionally, labels should make sure to sign up in order to receive royalties on the digital play of sound recordings they own.

How can a band or artist find out if they're owed money for digital plays of their music?

The SoundExchange website features a performance-tracking system called PLAYS (Performance Log Archive of Your Songs), which allows artists and labels to search the SoundExchange database to see whether or not they have earned any performance royalties. Searchable criteria include artist name, song and album title, and record label. If you are the featured performer or sound copyright owner of a piece of music, then SoundExchange may be holding a digital performance royalty for you. To receive payment, all you have to do is register with SoundExchange and download a few forms.

Does SoundExchange charge anything for this service?

SoundExchange is free to join. Like other royalty collection agencies, there is a small administrative fee taken out of the overall royalty pot, but bands or labels do not see a charge on their statements.

How is SoundExchange governed?

SoundExchange is overseen by a Board of Directors, which approves distribution methodology and administrative expenses. The board is split equally between artists and labels, with representatives from major and independent labels, as well as A2IM, the RIAA, and artist representatives from such organizations as AFTRA, AFM, the Recording Academy, Recording Artists' Coalition, the US Music Manager's Forum and the Future of Music Coalition.

Payment for foreign airplay

SoundExchange has also started working with foreign PROs to collect performance right royalties for those US artists who receive airplay in other countries. (Currently, 75 other nations have a performance right for terrestrial broadcasts; the US does not. Please see FMC's fact sheet on the [public performance right for sound recordings](#) for more info) SoundExchange offers this service to members who authorize SoundExchange to collect these foreign payments on their behalf.

Do you have to be a SoundExchange member to receive royalty payments?

No. SoundExchange will distribute digital performance royalties to any artist, band or SCRO that registers with payee information, i.e., a name, address and tax info. To date, SoundExchange has processed more than 200 million performances. Not all of the artists have been paid, however, due to the lack of appropriate info. The best way to ensure payment is to register. SoundExchange also offers membership to those who register. Membership is still free and comes with added benefits.

What musicians can do

Visit SoundExchange's website to learn more about the organization. Check the PLAYS database on their site to see if you or your label has accrued any royalties. Download the forms and become a member to ensure payment of existing or future digital performance royalties.

SoundExchange: A Digital Primer

Kristin Thomson

Wednesday, October 13, 2004

In August, FMC's Kristin Thomson had a chat with Neeta Ragoowansi, membership director for SoundExchange, the agency that collects and distributes the digital public performance royalty. We talked about the basics of how SoundExchange works and its growth over the past four years, and why it's important for bands, labels and performers to become members of SoundExchange. Don't know much about SoundExchange? Read on to see how it could apply to you.

Hi Neeta, and thanks for participating in this interview. Let's start with the basics, namely, what is SoundExchange?

SoundExchange is a non-profit organization that licenses music services that wish to engage in the public performance of sound recordings by digital transmission, collects the license fees and distributes royalties to those whose recordings were performed – the performer and the sound recording copyright owner (SRCO).

The “sound recording copyright owner”? Who is that?

Usually it's the record label. As you know, most bands that sign major label contracts (and some indie label contracts) sign away ownership of their copyrights for a length of time. So usually the SRCO is the label, but in cases where the performers have retained their copyrights — bands not signed to a label or those that have gotten their copyrights back — they become recipients of both parts of the SoundExchange royalty; as performer and as SRCO.

When and why was SoundExchange created?

In 1995, Congress passed Digital Performance Right in Sound Recordings Act (DPRA). This law granted a performance right for the digital transmission of sound recordings. Before the DPRA, US copyright law didn't include any performance right for sound recordings. So, unlike our counterparts in other countries – United Kingdom, France, Germany, the Netherlands, Japan, etc. – record companies and recording artists in the US can't collect royalties for the public performance of their sound recordings.[1] The DPRA established a performance right for sound recordings in digital transmissions. SoundExchange was then created to administer the digital performance right.

So how is this different from what ASCAP, BMI and SESAC do in the United States?

Same idea, but they represent a license on a different work. There are two copyrights contained in each recording – one for the musical composition and one for that particular recording of the composition. ASCAP, BMI and SESAC collect performance revenue for the owners of the copyrighted musical work (the song), i.e. music publishers, songwriters and composers. SoundExchange collects performance revenue for the sound recording copyright owner (usually the record label) and for the performers. We don't compete against each other – in fact, our work is complimentary.

Let's give people a concrete example. If I hear Patsy Cline singing “Crazy”, which was written by Willie Nelson, on terrestrial radio, Willie will get a check from BMI because he's the songwriter, but Patsy gets nothing. But if I hear Patsy Cline's “Crazy” on XM Radio, Patsy's estate is paid by SoundExchange for performing the song, and Willie is paid by BMI for writing it, correct?

Yes. We're complimentary, and operate independently of each other.

So bands and performers should be a member of both a PRO like ASCAP/BMI/SESAC, especially if they write their own songs, as well as SoundExchange. These organizations perform different functions and only SoundExchange collects digital royalties on behalf of performers.

Right. [still confused? See this chart for a better visual description of the difference in royalty streams based on performances]

What music services does SoundExchange license?

In the United States, SoundExchange licenses and collects royalties from satellite radio – XM and Sirius – non-interactive webcasts, cable subscription services like DMX and Music Choice that play on certain cableTV stations, and from the handful of terrestrial stations that also simulcast on the web.

We do not collect royalties on digital downloads – because they aren't considered a “performance” – or from analog TV and radio, or on interactive performances when you select what will be streamed.

Recently we've started to move beyond our statutory obligations. We've established arrangements with foreign performance rights organizations whereby SoundExchange becomes the conduit for foreign public performance monies to be distributed to American artists. So far we've come to agreements with PROs in Holland, the UK, Ireland, and Mexico. As I just mentioned, the United States is one of the few Western countries that doesn't have a broad performance right. Many other countries do have a performance right. So when, say, the Village People are played on the radio in Holland, there's money that's collected for their performance that sits in a “black box”, uncollected, because we do not have a reciprocal right in the US. So that money sits there unless that artists' management proactively sets up direct arrangements with these various foreign PROs to collect that money. With these new agreements we're working on, SoundExchange will act as the conduit for these foreign monies, meaning that performers and labels that are owed money from foreign public performances (say, radio play in the UK) will get that money from us.

Why have these foreign PROs been holding the money?

Basically because there is no administrative structure for these monies to be delivered to performers and SRCOs. Until SoundExchange was created, there was no comprehensive database of contact information for US performers. The Dutch PRO is fine if US artists come to get their royalties but a lot of US artists don't know that. An artist would need a business manager who

knows the value of signing up with each and every foreign organization to collect these monies, but how many artists have the time or knowledge to do that?

So these foreign PROs are collecting royalties on ...?

...terrestrial broadcasts in their own countries, and some on webcasting (only three countries have a digital right). And just to be clear, the royalties that we are making agreements about are only the ones that are for the performance right in sound recordings. ASCAP, BMI and SESAC have their own reciprocal agreements for songwriters and publishers.

These agreements are great for the foreign PROs as well. For example, the Dutch don't have a webcasting right but they do have a performance right and they had a 6-year backlog on money collected for American artists that they had no way to distribute. ASCAP and BMI didn't have folks in their database because they only deal with songwriters. Now SoundExchange can help find a home for the monies.

All that sounds fantastic. Let's get back to some other basics. When SoundExchange does a royalty distribution, who receives the royalties and how are they divided?

Once a month SoundExchange receives license payments from the digital broadcasters, along with reports about what was played including artist, song, and album. The royalties are then distributed for the most part on a pay-per-play basis and sent directly to the SRO and the performer. The SRO gets 50%, the featured performer receives 45%, and non-featured artists receive the remaining 5%. SoundExchange keeps the SRO and the featured artists' address on file and sends them their money directly. The 5% for non-featured artists is given to AFM and AFTRA who are responsible for distributing the money to individual artists.

SoundExchange pays on a census basis, so if you were played only once, you will still earn a distribution. As a result, many smaller, niche artists, who are often not picked up in samples, will earn royalties from SoundExchange.

How often are royalties disbursed to artists and copyright owners?

Right now we're doing disbursements twice a year – one in summer and one in the winter. This year since we're receiving our first monies from webcasters and some foreign PROs so we're also doing a fall distribution.

How many bands/artists have signed up with SoundExchange so far?

Thousands and thousands. SoundExchange will pay royalties regardless of whether artists and labels have become actual "members." When we have good payee information — a name and an address — we can pay out the royalty, even if these artists haven't formally become members. To date, we've processed over 200 million performances that can be attributed to approximately 40,000 different artist accounts. Since we don't have good payee info on most artists, however, we can't pay them. So you can see why it's really important for performers and labels to register with SoundExchange as soon as possible and claim their royalties. Artists, however, should not only register with SoundExchange but be actual members so they can reap the benefits of membership, one major benefit being the foreign performance royalties that can only be distributed through SoundExchange if the artist has designated SoundExchange (through its membership agreement) to do so on his or her behalf.

What is SoundExchange doing to let artists and bands know about its existence and encourage membership?

We run ads in music publications, we go to almost every music conference and speak on panels. We also meet with artist management companies and music attorneys to educate them and let them know that we exist, and help them understand so they can educate their artists and clients. We also cold call some artists that are on our list of unpaid monies. We use all marketing methods available to us, and we've hired a PR firm to get stories about this new right and SoundExchange placed into all print media, and so on.

And how much does it cost to become a member of SoundExchange?

It's free. There are just some forms you need to fill out, which are downloadable off our website.

What is the PLAYS system?

PLAYS is a web-based performance tracking system that SoundExchange is on the verge of launching that will let artists and record labels search our database to see if there are any performance royalties waiting for them. A search done under the first version of PLAYS will display the artists' name, the song title, album, and the record label. We hope to add a second level to this search engine that will allow members to make claims and update their information down the road.

Have there been any surprises? Any big payouts?

One R&B artist who is moderately successful in the US has a really big following in Europe and got paid six figures in Dutch performance royalties!

Some checks are big, and they will get bigger as the industry grows. Plus the checks get bigger with the foreign monies we are now able to collect on behalf of our members. These new performance rights are an exciting new stream of revenue for US artists and I hope everyone spreads the word to each other in the music community so they can get what's coming to them!

Thanks to Neeta and the crew at SoundExchange for providing information for this article. To learn more about SoundExchange or to become a member, visit: <http://www.soundexchange.com>

NOTES

1. The public performance right is something that the terrestrial radio broadcasters in the US have avoided paying for decades, claiming that the record labels and performers benefit from the "free promotion" that radio provides, which leads to more record sales, which is how the label and the artist supposedly get compensated. Good article here if you want more information:<http://www.musicindustrylaw.com/musictechlaw.html>