


Music Placement Companies

 One of the many recent developments in the music business is the increasing presence of so-called “music placement companies,” also known as “pitching companies.” The sole focus of these companies is to represent indie artists, songwriters, and small indie labels for purposes of getting their music used in movies, TV shows, commercials, computer games, and elsewhere.

Until the mid to late 1990s, most music submissions for films, TV shows, etc. were done by the TV/Film departments of record companies and music publishing companies. But in the 1990s, record companies and publishing companies started downsizing, and many of the people who left those companies started their own music placement companies. Those placement companies are now competing for music placements with record companies and publishers.

Today the music licensing market today is quite saturated, and not only because of the proliferation of music placement companies. Labels and publishers are now trying, more aggressively than ever, to replace the loss of income from record sales with income from other sources, such as licensing their music.

Despite this saturation, there are still many opportunities for you to place your music. The key is to educate yourself about that market and approach it as smartly and strategically as possible. Part of that process is to understand the options.

The Two Main Types of Placement Companies

Companies with Large Catalogs. These companies represent a large number of owners of recordings. They are able to provide a wide range of music to companies who are looking for music to use in productions. Usually the material can be previewed online.

One problem for artists with these kinds of companies is that it’s easy to get lost in the mix, since their focus is to provide access to a very large catalog of music, rather than to proactively promote a small number of artists.

Companies with Smaller Catalogs. These smaller companies represent a very limited number of artists. Their goal is *not* to provide a huge catalog of material, but instead to aggressively promote the relatively small number of artists they represent.

Whatever the company size, they will require you to sign an agreement spelling out your rights and theirs before representing you. I will refer to such agreements below as “Representation Agreements,” although different companies use different names.

Why Use a Music Placement Company?

There are several reasons to sign up with a music placement company.

Relationships. Music placement companies, at least the better ones, have existing relationships and regular interaction with professionals like music supervisors, and film and TV producers. Because of those relationships, they're much better able to make things happen than you might be able to do yourself.

And, just as important, they're often able, because of their relationships, to find much *better paying* placements. The reality of music licensing is that there are many, many low-dollar licensing opportunities, and a lot fewer big-dollar opportunities. Often, you need to be represented by people with the right relationships in order to get a good shot at the big-dollar opportunities.

There are good reasons why those relationships are so important. For anyone who works on the staff of a film production company, TV show, or ad agency, one of the worst things that can happen is to acquire the rights to use music and find out later that there are legal problems with it—for example, to find out that the music contains uncleared samples. So, they prefer to deal with music owners or representatives they know and trust.

They also want to deal with music owners or representatives whose musical knowledge and taste they trust, so that if they put out a request for a certain type of music for a particular project, they don't have to worry about receiving a lot of unusable or inappropriate submissions. The people who work on production staffs and at ad agencies, and music supervisors as well, usually work on very tight deadlines. They can't afford to waste time on people who can't quickly deliver the right material.

The reality is that in many instances, the music people on production staffs and at ad agencies have a short list of a relatively few "go-to" people. Often a placement opportunity becomes known only to those go-to people, since there may not be time for a wider search.

In short, if you can hook up with a company that has strong relationships with potential users of your music, you can benefit from those relationships.

Expertise. The good companies know how to proactively find the best placement opportunities. They also know how to submit the material in a way that will maximize the chances of successfully placing your music.

Leveraging Your Resources. It can take you a lot of time to find potential placement opportunities yourself and then submit material. This can easily distract you from doing other things that will move your career along.

Who Is the Competition for Music Placement Companies?

When seeking opportunities to place music in a film, TV show, commercial, or some other use, placement companies are not only competing with each other, but also with:

- Record companies
- Music publishers
- Music libraries
- Independent artists personally submitting their own material to potential users of music

What's the Difference Between a Music Placement Company and a Music Library?

Sometimes the terms Music Placement Company and Music Library are used interchangeably, but there are major differences.

Placement Companies represent music owned by *you*; typically the placement company will not ever *own* the music. There's one exception: In some cases, a placement company will become contractually entitled, under the terms of the representation agreement, to *future* part-ownership of any particular musical compositions they're able to license for film, TV, etc. (See the Co-Publishing section below.) You will still retain ownership of the sound recordings, though.

Music Libraries, on the other hand, will *own* the music you create. They will commission you, for a flat fee, to create and self-produce original music as "work for hire." The musician acts as an independent contractor. The music library will own all copyrights in the recordings and the underlying musical compositions you create for them.

Music library music is usually referred to as "library music" or "production music." Many of the larger music libraries are subsidiaries of major labels.

There are actually several different types of music libraries. In the past, the music owned by music libraries sounded very generic and formulaic. In recent years, though, library music has become much more competitive.

Payment Differences. There are major differences between how an artist/composer is paid under a Music Library deal versus a Music Placement Agreement.

With Music Library deals, you will ordinarily receive an *upfront flat fee* paid for your services in creating the compositions and recording. After that, the only money you will receive will *possibly* be the so-called "Writer's Share" of future ASCAP/BMI income, i.e., income received from ASCAP/BMI whenever the film or TV show containing your music is broadcast. (ASCAP and BMI pay music publishers and composers whenever a film or TV show containing their music is broadcast. Half of the ASCAP/BMI income for any particular song is called the "Publisher's Share" and the other half is the "Writer's Share.")

Not all Music Library agreements allow you to receive the Writer's Share, but many do.

In any event, with Music Library deals, you generally *won't* be entitled to a share of the future licensing fees and royalties the Music Library receives from third parties to whom they license your music.

With placement company deals, on the other hand, you receive a *stated percentage share* of:

- The future upfront (fixed amount) licensing fees received by the placement company each time they license your music for a project; and
- Any back-end royalties received by the placement company (for example, from the use of your music on movie soundtrack CDs).

The exact percentages are discussed in the Income Split section below.

With a placement company deal, you'll also be entitled to the Writer's Share of ASCAP/BMI income, *and* (sometimes) a piece of the Publisher's Share of ASCAP/BMI income. Whenever you are entitled to the Writer's Share or any part of the Publisher's Share, try to make sure that you will be entitled to receive such payments *directly from ASCAP/BMI*, rather than *indirectly* through the placement company.

Evaluating Music Placement Companies

There are several things you can do to evaluate a placement company:

- Look at the company's website, which will give you a good idea of the level of artists they represent. The larger companies usually have a FAQ page on their site which will answer some basic questions. The information on the website will, of course, be self-serving, but it's a good place to start getting a feel for the company.
- Contact some of the artists listed on the website and ask them for their opinion of the company. You'll often need to go to the artists' own websites or Facebook pages to contact them.
- Talk to any solid music business contacts you have, to find out whether they know anything about the company or the people who run the company.

The Main Deal Points of Representation Agreements

The terms of such representation agreements vary from company to company, but most agreements cover at least the following main deal points:

Exclusivity vs. Non-exclusivity. Many of the smaller companies require an "exclusive arrangement," meaning that they will be the only company entitled to pitch your music for use in movies, TV shows, etc.

Most of the larger companies do not require exclusivity, in which case you can give *multiple* companies the right, simultaneously, to pitch your music.

Before signing any agreement, make sure that the company is a good fit for you. Be careful. If you sign an unproductive *exclusive* deal, your hands will be tied from letting other companies try to place your music. And even if it's just a *non-exclusive* deal, it will prevent you from later entering into an exclusive deal with *another company* that might be much better able to help you place your music.

Rights Granted. The agreement will normally contain a list of the rights that you're granting to the company (for example, the right to stream your music on their website, the right to sign deals on your behalf, etc.).

Approval Rights. Sometimes the agreement will provide that your approval must be obtained before they can license your music for use in political campaigns, NC-17 movies, etc. Whenever possible, it's advisable for you to have a right of approval over any licensing deals the placement company enters into on your behalf.

Term. The "term" is the period of time during which they're entitled to seek licensing deals on your behalf. There is some variation from company to company, but the term is typically for 1, 2, or 3 years. Generally, the shorter the term the better it is for you, since you'll be able to exit an unproductive relationship faster.

If the proposed term is longer than you like, try to negotiate for a shorter term, or you could ask for a short initial term (for example, one year). Then the contract could state that if they earn a certain specified amount of income for you in that initial year, they would have the right to extend the term of the agreement for another year or two.

Territory. Typically, the music placement company will have the right to pitch and license your music *worldwide*. If, at the time of signing the representation agreement, you *already* have other deals in place (for example, a sub-publishing agreement with a publisher in Europe), that issue needs to be addressed in the representation agreement. You will want to make sure the placement company agrees not to engage in activities which would in effect violate the terms of your prior agreements with third parties.

Income Split. Typically, the company will be entitled to receive in the range of 25% to 50% of the income generated as a result of licensing deals they enter into on your behalf.

Sometimes, as discussed below, the placement company takes an administration "fee off the top," *then* takes their stated percentage of the remaining balance, and pays you what's left.

I recently saw a company asking for 65%. However, they worded it differently by stating that *you* would receive 35%, which I suppose is intended to sound more favorable to you than saying that *they* (the music placement company) get 65%.

The most typical rate taken by a placement company is 50%, though some people feel that's an unreasonably high percentage.

Whatever the placement company's percentage share is, they will typically get that percentage of the upfront licensing fees from film and TV producers etc., and any back-end royalties (from soundtrack CDs etc). They will also receive a share of the ASCAP/BMI *broadcast income* if, as a result of a licensing deal, a film or TV show containing your music is broadcast and thereby generates ASCAP/BMI income.

Typically, these companies are not that flexible about changing their standard percentages unless they're anxious to sign you.

Administration Fee. As mentioned above, some companies also charge an “off-the-top” administration fee, in the range of 10% to 15%. If so, out of every dollar they receive from licensing deals for your music, they will take 10 to 15 cents. The *remaining amount* will then be split between you and the placement company according to the basic percentage (the 25% to 50% percent described above.)

Re-titling. Many representation agreements say that the placement company will be entitled to register your musical composition under a *new song title* with the performance rights organization you belong to (usually, ASCAP or BMI).

There’s a simple reason for this. Let’s say you have a record out. One or more songs from the record are getting airplay, and therefore ASCAP/BMI income is being generated as a result of that airplay. There’s no reason why the placement company should share in that income—they had nothing to do with causing that airplay.

In order to keep that from happening, the contract will provide that the placement company can “re-title” the song and file a new “title registration” for it. The new title registration will show a new (second) title that is different than the original title. By doing so, a new (second) royalty account is created in the ASCAP/BMI database for the song.

If the song is then subsequently licensed for use in a film or TV show, the production company documents (“cue sheets”) that report such usage to ASCAP/BMI will show the song’s *new title*, and the placement company will be entitled to a share of that income from that usage. But the placement company will *not* be entitled to any income earned by the song under its *original title*, since the placement company’s name is not on the royalty account for that song title.

In short, if the song is re-titled, the placement company will share only in the income from licensing deals it created, and not in any income earned under the original song title.

If a musical composition is *not* re-titled, your own publishing company receives all of the ASCAP/BMI income directly from ASCAP or BMI. You are then obligated to turn around and pay the placement company *its share* of that income. Some placement companies are willing to agree to this arrangement, but most are not.

By the way, most placement companies have an ASCAP-affiliated publishing company *and* a separate BMI-affiliated publishing company, so that they have a way to collect their share of ASCAP/BMI income directly from ASCAP and BMI. That way, they don’t have to worry about you not paying them (the placement company) their share of that income.

Re-titling is a controversial topic in the music licensing world. Many people feel that it can complicate issues of who owns the song, and increases the odds that the placement company will receive more income than it is entitled to collect. Also, if you enter into non-exclusive deals with multiple placement companies and each of them registers the song with a different new title, you can run into problems if they then later submit the same song, with different titles, for the same project (for example, a film or TV show). It may take awhile for the party

receiving the music to realize this has happened, and they're usually not very happy about it, since they won't be sure who they should be negotiating with.

Post-term Administration. Income can continue to be earned from licensing deals long after the term of the representation agreement ends. Representation agreements often provide, therefore, that the placement company has the right to collect that post-term income, at least for a certain period of time. If there is post-term income they are, of course, obligated to pay you your share of that money.

Warranties. Typically the agreement will contain a warranty clause, stating that you are the owner and creator of all of the material covered by the representation agreement, and that the material doesn't contain any digital "samples."

If there are any uncleared samples in your recordings, or if there are any other legal problems with the contents of your music, make sure the placement company is aware of it *before* they start pitching your material. Such problems will create major legal liability for you, the placement company, and anyone to whom the placement company has licensed your music. Also, this will seriously damage or destroy your relationship with the placement company. This is serious stuff, and you need to be absolutely upfront about *any* legal problems with your music.

Other Deal Points

The following deal points tend to appear mostly in the representation agreements used by smaller placement companies.

With the *smaller* companies, it's easier to negotiate for changes in the agreement to your favor. With the larger companies, it's more likely to be a take it or leave it situation.

Future Co-Publishing Rights. Some placement contracts state that if they place one of your tracks in, for example, a film or TV show, they will become entitled to a share of copyright ownership of the *underlying musical composition*, but *not* the master recording. Typically, they ask for 50% of the Publisher's Share. In that case, for every dollar of music publishing income, 50 cents will go to you as the artist/writer (as the Writer's Share), 25 cents will go to your publishing company (half of the Publisher's Share), and the placement company will receive the remaining 25 cents (the other half of the Publisher's Share).

If you're able to negotiate changes in the agreement, you should ask for a benchmark they have to meet in order to have the right to a share of your copyrights of the songs they place. For example, you could ask for a clause stating they become entitled to a share of the copyright of a musical composition only if the licensing fees for that musical composition are at least a certain dollar amount. The higher the amount, the better for you. That way you don't have to be concerned about them getting a share of a copyright just because they found a very low-dollar licensing deal for you.

Ownership of Masters. Typically, representation agreements do *not* give the placement company the right to acquire any ownership share of your *master recordings*.

Future Exclusivity. Some representation agreements say that if the company places a song with a particular TV show or ad campaign, it will be entitled to continue representing you for any *future* music licensing for the remaining duration of *that show or ad campaign*, even if the term of the representation agreement has expired in the meantime.

With such a clause in the agreement, if they place one of your songs in, for example, a TV show, then only *they* can submit your songs to that same TV show in the future, for the remaining life of the show. You'll be contractually prohibited from ever submitting any of your songs to that TV show directly.

Exclusions. You may want to negotiate for a clause to be added to the contract, saying the placement company won't be entitled to share in any income earned from your own self-released or any label-released records. That way, you won't be obligated to pay them, for example, any mechanical royalties based on those record sales, even if they later become co-owners of one or more of the musical compositions on those records.

You should also have a clause in the contract providing that the placement company won't be entitled to share in any income from deals you have signed *in the past*.