

# SoundExchange: Claim Your Money!



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## >> Introduction to SoundExchange

The Digital Millennium Copyright Act (the “DMCA”), signed into law in 1998, is best known for its provisions relating to copyright infringements on the Internet. But it also created an essential royalty stream for performers, musicians, and master rights holders in the United States.

Most industrialized nations in the world pay stakeholders master performance royalties wherever performance royalties are collected on compositions, including terrestrial radio (this royalty stream is known as “neighboring rights”). The right in America is more limited...well, actually, non-existent. Many great advocates have pushed for legislation addressing this discrepancy, with bills such as the Fair Play Fair Pay Act. Unfortunately, the National Association of Broadcasters, an extremely powerful lobbying group, vehemently oppose any legislation that might move the needle forward. So, for now, we will take what we can get.

The DMCA created a statutory right for performers and master rights holders to receive master performance royalties from *non-interactive* digital streaming services. SiriusXM and Pandora are the major players, with all other Internet radio also encompassed. These are distinguished from *interactive* digital streaming services (e.g., Spotify, Apple Music, Tidal) by an inability to precisely choose your playlist. So, while you might be able to put on the Cardi B radio station on a non-interactive streaming service, you won’t be able to play “Bodak Yellow” on repeat (like you would on an interactive streaming service).

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SoundExchange is the very useful entity designated to collect these master performance royalties from non-interactive digital streaming services. It’s essential as an artist or artist representative to understand how SoundExchange royalties work. If an artist’s masters are getting any plays at all on non-interactive digital streaming services, there is money out there to be claimed. As a matter of fact, SoundExchange is currently holding untold amounts in unclaimed monies – literally free money if the applicable rights holders would register to claim it. If you’ve got a hit recording on your hands, SoundExchange royalties could be in the hundreds of thousands of dollars in a year – or beyond.

249

One important fact makes these royalties even more important: It doesn’t matter if an artist is unrecouped under a record or distribution agreement – they are entitled to SoundExchange royalties regardless. By default, SoundExchange performer royalties are paid directly to performer, not to their labels or a third-party entity, and the labels can’t touch this money by statute. In many instances, SoundExchange royalties can be the only consistent income artists see from their actual recordings.

### >> SoundExchange Royalty Stream Breakdown

As we’ve already explained, SoundExchange is the entity that currently collects master performance royalties from non-interactive digital streaming services in the United States. When non-interactive digital service providers like Pandora, SiriusXM and various webcasters play your music on their service, the master performance royalties they pay for that use is paid directly to SoundExchange.

So what does SoundExchange do with these royalties? First, they allocate these monies to three groups: the rights owner, the featured artist(s),<sup>[1]</sup> and the non-featured artist(s). In the world of SoundExchange, the “rights owner” is the person or entity who owns or controls the rights to the music (e.g., a record label – or the artist him or herself where self-releasing); the “featured artist” is the artist who actually performs the music and is credited in the title; and the “non-featured artists” are those who render non-vocal performances on the music (i.e., musicians). So then, from the royalties that SoundExchange receives for the digital public

performance of a recording on non-interactive digital streaming services, how much does each group receive? Great question, thanks for asking! Under United States Copyright Law, the rights owner is entitled to receive 50% of all SoundExchange royalties; the featured artists are entitled to 45% of all SoundExchange royalties; and the non-featured artists are entitled to share the remaining 5% of SoundExchange royalties via SAG-AFTRA and AFM. SoundExchange's administration fee comes off the top.

With respect to the featured artist share, it's important to note that because a "featured artist" is anyone who renders a featured performance on a track (usually, but not always, a vocalist), a "guest artist" may be entitled to share in the "featured artist" share of SoundExchange royalties. What this means is that if your track is being performed by "Deyonce featuring MELLR", MELLR will want to share in the 45% of SoundExchange royalties Deyonce is entitled to receive.

Where there are two featured artists on a track, the default rule for SoundExchange is to split the featured artist royalties equally between the two artists (this often unintentionally encompasses remixers who are credited in a track title as well). So, it's important to make sure whenever you do not want the featured artist royalties split equally between those performing on the track, that each artist submit a "Repertoire Chart" to SoundExchange expressly indicating how these royalties should be allocated (*see Section IV below* for more information here). Who else shares in the "featured artist" 45% share of SoundExchange royalties? In short, any other "record royalty participant" on the track. In other words, where any third party is entitled to receive a record royalty on the track, via industry custom, he/she too is usually granted a share of SoundExchange royalties.

This is typically a producer or mixer, for example. Such a royalty participant's share of SoundExchange monies will customarily come "off-the-top" before the featured artists receive their share (assuming all featured artists execute LODs – *see Section III below*). The portion of SoundExchange royalties allocated to such royalty participants is traditionally determined by a "fraction" (*see Section III below* for the breakdown).

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For purposes of illustration, on Deyonce’s track, of the 45% featured artist share of SoundExchange royalties that SoundExchange collects, per the “fraction”, producer Such n Such is entitled to receive 20% of such royalties “off-the-top” (i.e., 20% of the 45%, or 9% of the whole) leaving Deyonce and MELLR to share the remaining 80% of the featured artist royalties (i.e. 80% of the 45%, or 36% of the whole) equally (unless Deyonce demands a greater share due to her extensive contributions to the track in comparison to those of MELLR’s).

### >> SoundExchange Letter of Direction (“LOD”)

So now that we understand the breakdown of the various SoundExchange royalty streams, you’ll likely want to know how everyone gets paid. If you’re a master rights owner, so long as you’re registered with SoundExchange, they’ll automatically send you your 50% share. Same thing goes featured artists—so long as you’re registered with SoundExchange, they’ll automatically send you your 45% share during normal accounting periods. If you’re a non-featured artist, the 5% non-featured artist share of SoundExchange royalties is paid into an AFM & SAG-AFTRA Fund. The Fund then identifies the non-featured artists on a sound recording and will subsequently distribute the 5% share amongst the non-featured artists identified. Non-featured artists are paid their share via the two unions.

Where it gets a little more detailed is when it comes to those that share in the featured artist share of SoundExchange royalties (for example, producer Such n Such). SoundExchange will require that producer Such n Such obtain a “Letter of Direction” (“LOD”) from the featured artist(s) before SoundExchange will issue their royalties.

SoundExchange LODs are used to allocate a portion of featured artist royalties to royalty participants who aren’t given a cut of this income by default—namely, producers and/or mixers who are given royalty points on a recording (for simplicity, we’ll use a producer as an example for the remainder of this section). This practice, which SoundExchange has been facilitating voluntarily for years, was codified into law by the Music Modernization Act in 2018—noted in publicity as the first time

the word “producer” has ever appeared in federal copyright law.<sup>[2]</sup> The form itself is located on the SoundExchange website (and easy to find via a web search).

The LOD sets out the percentage of the featured artist’s royalties that should be allocated to the applicable producer/mixer. This is usually calculated as a fraction, calculated by dividing the producer’s record royalty on a master recording by the artist’s record royalty on the same master recording. Lawyers will recognize this as the “fraction” for purposes of net receipts and flat fee income, standard in most producer agreements (the SoundExchange percentage will always match). Here are some examples:

- Where producer Such n Such receives a 3% PPD record royalty, on a master where the artist’s all-in rate is 18%, the SoundExchange percentage is 3 divided by 18, equaling 16.6% (how to round the fraction is sometimes a matter of debate—this could also be written as 16.7%, 16.66%, or 16.67%).
- Where producer Such n Such receives a 4% PPD record royalty, on a master where the artist’s all-in rate is 16%, the SoundExchange percentage is 4 divided by 16, equaling 25%.
- Where producer Such n Such receives 25% of the net artist royalty, simply plug this number into the SoundExchange LOD.

The producer’s percentage is up for negotiation where the artist is unsigned and self-releasing (with the producer earning on PPD), or the artist is using imputed PPD (aka, completely made up) royalties when signed to a net profits deal. In our capacity as artist representatives, we might default to using a higher range artist royalty (e.g., 20% PPD) solely for purposes of this calculation. In our capacity as producer representatives, where appropriate, we might argue for a fictional artist royalty closer to 16% PPD or 18% PPD. The difference in the “fraction” for a producer earning a 3% producer royalty between a higher range artist royalty versus a lower range artist royalty could be 15% of SoundExchange royalties (3 over 20) versus 18.75% of SoundExchange royalties (3 over 16). What the artist attorney won’t tell you is that

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because this number is arbitrary, it’s completely up for negotiation – when representing a producer, ask for what she or he deserves, considering the circumstances.

The other part that sometimes (but not usually) requires some thought is whether the LOD should apply retroactively or prospectively from submission. It will almost always be retroactive, unless for some reason a producer’s share should kick in on a certain date (depending on the artist and producer’s contract language). Take note though that it could be to an artist’s benefit to get this sorted sooner than later.

When a producer receives retroactive payments, it comes out of SoundExchange monies payable (generally) to the artist since the artist has been receiving 100% of the SoundExchange royalties (instead of e.g., 80%) since the track was released. If the track was a hit, this could be a big hold up to the artist’s cash flow while the producer catches up on retroactive royalty earnings.

The rest of the form is fortunately straightforward. In “Name of Solo Artist or Group on recording(s)” field, this is the primary artist’s name as billed in the credits (this is the artist’s pseudonym where applicable). “Legal Name of Performer(s)” is just that – and may be redundant with the foregoing where an artist is billed by their legal name. “Name of LOD Recipient (“Payee”)” is the producer’s name and/or the producer’s entity (however he or she is registered with SoundExchange). “Payee address” and “Payee E-Mail” should also match the info the producer registered with SoundExchange – important for the obvious reason of making sure the producer actually receives a payment.

“Payment Percentage” is listed on page 1 where it’s only one master or all masters are paid out at the same rate. The “[p]ercentage varies” option is where there are multiple masters at different rates. Regardless, the LOD Schedule 1 (“Repertoire Chart”) needs to be filled out and submitted with info for each track. Party names, track names, and percentages to the producer are essential info – any other information is optional, but helpful for helping SoundExchange track down payments. This is a separate attachment on the SoundExchange website but

it's easy enough to add into a Word document for your producer agreements. The boilerplate isn't up for negotiation – it's SoundExchange's standard wording and there's no point to revising.

Finally, it's important to know who has to sign the LOD. *Each member* of an artist who is a signatory on an account must sign each LOD. The exception is where a group is registered together under a common entity, in which case a single authorized signatory could do the trick (if granted this permission on the account).

One thing to look out for here as a producer, is that all featured artists need to sign an LOD, meaning the primary artist and anyone credited as “*featuring*” on the track or otherwise receiving a share of the featured artist royalties as a performer. So, for example, if producer Such n Such produces a track by Deyonce featuring MELLR, he would need to ensure that *both* Deyonce and MELLR sign the LOD. Otherwise, if only one of the two featured artists signs the LOD, producer Such n Such will receive only *half* of his percentage share of the pie. Additionally, in lieu of having each featured artist sign the same LOD (perhaps this is logistically difficult), SoundExchange will also accept separate signed LODs provided the same “Payment Percentage” is listed on each LOD.

Once all the information and signatures are sorted, there's the most important step of all—making sure it gets submitted. The artist representative should send via email to the SoundExchange Accounts address (accounts@soundexchange.com), although the producer can send directly if necessary. When sending on behalf of the artist, as a courtesy you should copy the producer or the producer's representative so they can confirm it's been handled (and SoundExchange can direct any questions to them directly). You should at least require the artist representative to forward to the producer representatives for producer's records.

### » Featured Artist Repertoire Chart

As discussed above in *Section II*, SoundExchange will split featured artist royalties equally between artists credited in the title of a release. Where you

want to avoid the default split, there are a couple options for making sure SoundExchange receives the splits and properly registers the shares.

The standard method is requiring all parties to submit copies of the SoundExchange Featured Artist Repertoire Submission Form (located on the SoundExchange website) with only their respective shares. Besides the contact information, the important part of this form is setting out the master title and the artist's share. As an example, primary artist would submit a form stating their share at 75%, and the artist receiving "featuring credit" would submit a form stating their share at 25%.

There are a couple issues with this approach. The biggest challenge, even where the artist attorney drafts these forms for all parties, is *actually getting everyone to submit*. It's hard enough to manage where there's only one other artist getting "featuring" credit – but some tracks might have four or more in the title.

If one person neglects to submit, the data doesn't match up and the royalties are thrown into conflict. "Conflict" is a scary word to hear in this context—much like publishing disputes, no one gets paid until the conflict gets resolved. SoundExchange may or may not let you know that it's in conflict, so royalties could be held up indefinitely without anyone even realizing it. The other issue is that you have no way of proving that someone took a reduced cut if they don't submit the form on their end, or worse – renege and submit a form with a higher split.

Accordingly, we've come up with a new method for documenting everyone's shares in a way that is clear to SoundExchange and ensures proper registration. Simply put, we take a version of the Repertoire Submission Form, slap a signature line on it for any featured artists, and make features sign them as a matter of practice in our side artist agreements.

You can put everyone's share on one form with all signatures, or have only an artist taking a reduced cut sign a form memorializing their

share. The important part is that an artist taking a reduced cut signs a document that you can then provide to SoundExchange as proof of your agreement. Our form is attached to this article as Exhibit A below.<sup>[3]</sup>

**Exhibit A Repertoire Submission Form**

		<b>(PRIMARY ARTIST NAME)</b>					
<b>REPERTOIRE SUBMISSION FORM</b>							
<b>RECORDING INFORMATION, MINIMUM REQUIRED</b>				<b>FEATURED PERFORMER CLAIM</b>		<b>MASTER RECORDING CLAIM</b>	
Artist (Artist, Band, or Ensemble)	Track Title	Album Title	Marketing Label	What % of the Featured Artist Performance Royalty do you claim? (Ex, 100% if a solo artist, or 25% if a Member of a Quartet, etc. Enter "n/a" if not a Performer)	Do you own the Master Recording of this Track? (Y/N)	If Yes, what % of the Master Recording do you own?	If No, are you the authorized Collection Designee for the Master Recording of this track?
(Featured Artist Name)							

**AGREED AND ACCEPTED**

**Featured Artist Legal Name p/k/a " \_ "**

Again, none of this is an issue where you are fine with the default equal split. But it doesn't hurt to get everything submitted for the avoidance of doubt (and a paper trail if a dispute pops up later), but if everyone is okay with the default, it's not the end of the world if nothing gets submitted with respect to divvying up the featured artist share.

**>> Managing Your Account**

It is imperative that artists register and set up an account with SoundExchange Direct, their online royalty management portal. Without an account,

monies will remain on hold. Registration is free and can be done online, by mail, or by email. Once the account is created, artists and copyright holders can submit tracks and insure all online submissions are correctly registered by checking submitted track titles and royalty splits.

Monies will also be held if there are conflicting claims over submitted royalty percentages. The simplest solution to reporting conflicting claims is to make sure all parties involved are submitting repertoire charts that contain matching information with regard to percentage splits. If by chance a mistake is made during the submission process, SoundExchange's Rights Management Department will work to resolve these claims. Additionally, if an artist notices her own online submission has incorrect information, she may re-submit the repertoire chart for the track online via the SoundExchange Direct account or may contact SoundExchange directly at [accounts@soundexchange.com](mailto:accounts@soundexchange.com).

## >> Neighboring Rights

Neighboring rights are discussed extensively elsewhere in this volume – see “International Neighboring Rights Customs” by Dean Francis. There are a wide variety of organizations available to collect neighboring rights royalties on behalf of those who are entitled to this income stream. Many countries have designated governmental organizations dedicated to collecting these royalties, in that country and abroad. They sometimes collect directly or by sublicensing these rights territory by territory.

A few private organizations give you more assurance that they're searching every corner of the globe for your royalties, including Premier Muzik and Kobalt Neighboring Rights. One consideration for an American artist who uses one of these services is whether to use that company to collect the royalties under the jurisdiction of SoundExchange, i.e., royalties paid by non-interactive digital streaming services in the US. If a client is on top of their SoundExchange registrations, without a bunch of straggling LODs, repertoire sheets, conflicts, etc., I usually recommend forgoing this option and making their deal with the neighboring rights collection entity ex-US only, so that all SoundExchange royalties go to them directly. If a client needs some help getting everything cleaned

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up, it might be worth the small additional cut to the collection company for them to collect worldwide and administer the artist's SoundExchange account as well.

### >> Conclusion

It can be daunting to figure out how to properly track and manage your SoundExchange royalties, but it's essential to go out and *claim that* money! With a bit of knowledge about how it all works, and the best practices laid out in this article, you'll be on your way to collecting your checks in no time.

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- [1] *To clarify, all references to “artists” hereunder refer to “performers”—anyone whose performance is embodied on a master recording.*
  - [2] *But note that the share to a producer or mixer is still up for negotiation and can be blocked by the artist. It is not entirely clear how the MMA will be implemented in this regard.*
  - [3] *While this isn’t standard practice yet with SoundExchange, we have had success with this method and have discussed with a few specific contacts at SoundExchange. Please feel free to contact the authors of this piece if you want a copy of this form to edit and use.*