

Music + Money Quiz

18 month report

November 2014



In July 2013, Future of Music Coalition launched the Money from Music Quizzes, four online questionnaires that were designed to test how much musicians knew about money and music, and the copyright laws, licenses and agreements that frequently determine who gets paid, and how much.

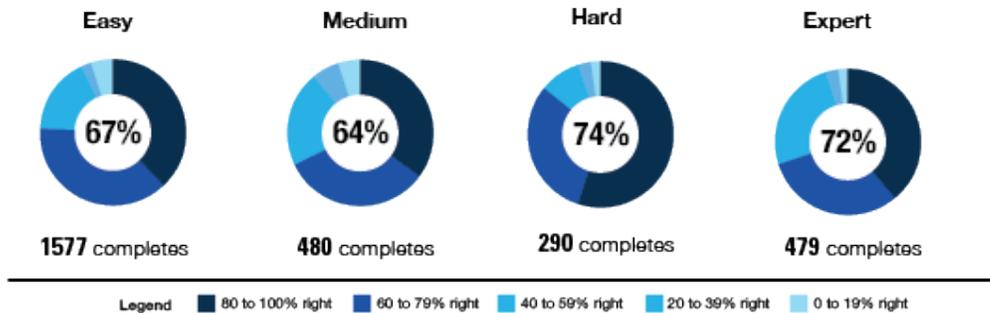
FMC's goals with this project were twofold. We hoped to:

- (1) educate musicians about some common – but often misunderstood – copyright and revenue stream issues in a fun and challenging way
- (2) use the data generated by the quiz responses to identify knowledge gaps in the music community and, in partnership with unions, artist advocates, service organizations and schools, address areas of confusion.

Over 2,800 people have taken at least one quiz in the past 18 months. The topline scores are:

Music + Money Quizzes

Average score by quiz



This brief report focuses on some of the quiz questions that users found difficult to answer. It also describes what these incorrect answers tell us about knowledge gaps in the music community, and how musician advocates and service organizations can reduce confusion through continued (and better designed) education.

The correct answer is in **bold**.

Permissions for covers

An early question on the easy quiz asked about permissions for recording a cover of a famous song.

A US-based band is recording an album of material they wrote, but wants one of the tracks to be a cover of The Rolling Stones' song "Brown Sugar", written by Mick Jagger and Keith Richards. Who do they need to get permission from before recording the cover?

- 4% A. The Rolling Stones, via their manager.
- 48% B. The Rolling Stones' publisher.
- 7% C. The Rolling Stones' record label.
- 40% D. They do not need to get advance permission to record this cover.**

Forty percent of respondents correctly answered that the band did not need to get advance permission before recording this cover. However, a larger 48% said the band needed permission from the Rolling Stones' publisher.

It is true that a band needs to get a mechanical license to release this cover, so choosing an answer that references permission from the publisher is in the right ballpark, but getting permission or a license does not need to occur *in advance* of recording the cover; they just need to get a mechanical license from the Rolling Stones' publisher or provide the publisher with notice of the band's intention to obtain a compulsory license within 30 days of recording and before distributing it/selling it.

The answer key explains that, once a copyright owner has recorded and distributed a work publicly, a compulsory mechanical license is available to anyone else who wants to record and distribute the work in the US, as long as the artist doing the cover pays a mechanical license fee at the statutory compulsory rate and complies with the compulsory license terms. Then it describes how bands can quickly and easily secure a mechanical license through online services like [Limelight](#) or Harry Fox's [Songfile](#) system.

Mechanical royalty rates

Another question on the easy quiz asked respondents to properly calculate the mechanical royalties due on a recorded cover.

The band sells all 500 vinyl copies of the album plus 500 downloads on iTunes to US customers. According to the current statutory rates, how much does this 4 minute, 30 second-long cover of “Brown Sugar” generate in mechanical royalties, based on these sales?

46% A. 9.1% of net sales

24% B. \$91

15% C. 10% of net sales, since it was one of ten songs on the record

14% D. Nothing

Only a quarter of respondents correctly selected \$91, which reflects $(500 \text{ vinyl} + 500 \text{ downloads}) \times 9.1 \text{ cents per copy} = \91.00 . A much larger percentage picked 9.1% of net sales. We can understand quiz takers’ confusion, but it is the case that [mechanicals for physical sales and permanent downloads](#) are based on penny rate per reproduced copy; for example, it’s 9.1 cents regardless if an mp3 single is priced for sale for 50 cents or \$1.29. The quiz answers explain this math, and provide a link to both [Limelight](#) and Harry Fox’s [Songfile](#) system that issue mechanical licenses for covers.

Public performance royalties for terrestrial airplay

A question on the medium quiz asked which rightsholders receive royalties from terrestrial radio airplay in the United States.

Commercial soft rock radio stations around the country frequently play Whitney Houston’s version of “I Will Always Love You” – a song written by Dolly Parton. Who receives public performance royalties for this consistent terrestrial airplay of the song?

55% A. Dolly Parton and Dolly's publisher

7% B. The estate of Whitney Houston, the performer

2% C. The record label that released Whitney's recording (Arista)

35% D. All of the above: (1) Dolly, (2) Dolly's publisher, (3) Whitney's estate and (4) Arista

Over half of respondents correctly answered that songwriter Dolly Parton and Dolly Parton's publisher are the recipients of these public performance royalties for terrestrial airplay. However, a third of respondents – 35% – thought that Dolly, her publisher, plus Whitney Houston, plus the record label Arista, received royalties. That answer would make sense, given Whitney and Arista's role in making this song one of the biggest selling and most recognizable hits of all time. But US copyright law has a long-standing loophole exempting terrestrial radio from a public performance right for sound recordings, so neither Whitney Houston nor Arista receive any royalties when the recording is played on terrestrial radio in the US.

Note that this royalty anomaly only applies to *terrestrial* broadcasters. Digital broadcasters, including webcasters, Sirius XM and any online simulcast of a terrestrial radio station pay all four rightsholder groups: songwriters, publishers, featured artists and labels. And this anomaly exists in very few countries. In the vast majority of the world, all four rightsholder groups are paid when music is broadcast on terrestrial radio.

The answer key provides links to information about the decades-long effort to get [Congress to enact a public performance right for sound recordings on terrestrial radio](#), which would end this loophole and ensure that all musicians and rightsholders are fairly compensated.

Mechanical royalty payments to songwriters in the US

The medium quiz also went a step further on mechanical royalties by asking how a songwriter would receive mechanicals if another band recorded and released his song.

A US-based, self-published songwriter has a song that, although not selling well when he released it, is later recorded by a very famous recording artist signed to a major US label. Is this songwriter paid when consumers purchase and download this new recording from the iTunes Music Store and, if so, how?

- 4% A. No. The songwriter isn't paid for download sales.
- 47% B. Yes. The songwriter receives a mechanical sales royalty from his PRO.
- 49% C. Yes. The songwriter receives a mechanical royalty payment from the record label that put out the recording.**

There are three tricky parts to this question. First, respondents need to understand the difference between a download and a public performance. Second, they need to be aware that digital downloads generate mechanical royalties. Third, they need to know the unique way that mechanicals are paid in the US.

Nearly all respondents understood that this songwriter is compensated for digital sales of the song he wrote, even if he didn't perform on the recording that music fans hear. 47% thought that this money would flow through the songwriter's PRO. But PROs are not responsible for distributing royalties based on the reproduction of compositions; they distribute royalties based on the *public performance* of compositions. So B is incorrect.

The other half of respondents – 49% – correctly chose C. In the US, mechanical royalty payments are the responsibility of the entity that reproduces and distributes the recording of the work, usually the record label that released the cover. The retailer pays the record label a wholesale price for sales, and then the record label pays the publisher, which then pays their member songwriter. In the case above, the songwriter is self-published, so his own publishing company would receive the mechanical royalties from the record label. But this question also highlights a quirk in how the money flows in the US. In many other countries, mechanicals flow from the retailer to an autonomous mechanical rights agency, then to the publishers and the songwriters.

Sales income for orchestral releases

The medium quiz also included a question about how orchestra members are compensated when studio albums are sold online.

A major US orchestra's performance of Stravinsky's Rite of Spring – recorded in 2012 and released on a major label – is for sale on iTunes. How are the orchestra members who participated in the recording session paid for digital sales?

- 21% A. The performers aren't paid anything for sales. The income from sales goes to the orchestra management, just like ticket sales.
- 43% B. The performers aren't paid directly for sales. Orchestra members who participated in the recording are entitled to participate in distributions made by the Sound Recordings Special Payments Fund.**
- 12% C. iTunes pays the orchestra management for sales, which then disburses the money to current player members as a bonus on their paychecks.
- 25% D. iTunes pays SoundExchange, which then distributes the income to performers on the recording via the AFM & SAG-AFTRA Fund.

43% of respondents correctly chose B; orchestra members who participated in the recording session are paid for download sales via the [Sound Recording Special Payments](#)

[Fund](#). The answer key provides details about this fund, which is managed by the AFM and funded by major label revenues.

Another 25% of respondents incorrectly chose D, that iTunes pays SoundExchange. This is a logical guess, as SoundExchange does pass along 5% of collected royalties to the [AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund](#) for distribution to background singers and session players but, like the songwriter PROs, SoundExchange is collecting royalties based on digital *performances*, not digital downloads. This represents the persistent – and understandable – confusion about the difference between performances and downloads.

A fifth of respondents – 21% – thought that orchestra members were not compensated at all for sales. This would seem like a reasonable answer too, given that professional orchestra players are, by and large, paid a steady salary for their work as musicians. But that is not the case, as the AFM collective bargaining agreement requires payment for downloads via a separate fund.

We know that the average rocker has probably not thought about whether or how orchestra members are paid, so we did not expect a lot of respondents to get this right. But we did include it on the quiz to underscore the different ways that performers are compensated for sound recording sales, and to provide a practical example of how the [Sound Recording Special Payments Fund](#) works. (Note: the SRSPF pays rockers too, as long as the record is released on a label that has signed a collective bargaining agreement with the AFM)

Payments to session players

The hard quiz asked a question about compensation for session players, long past the time when they were in the studio.

There's a NYC-based session drummer who has played on hundreds of famous records in the 80s and 90s, spanning many genres. Many of these famous studio recordings are still played on radio and streamed frequently. How is this session drummer paid when any of these recordings are played on Sirius XM?

- 38% A. He's not paid for current performances. He was compensated for his time and expertise during the original recording sessions.
- 1% B. He only receives payments from the bands and recording artists who he is still in touch with.
- 60% C. SoundExchange sends 5% of its collected revenue and playlist data to the AFM & SAG-AFTRA Fund, which then disburses it to**

session players, sidemen and background singers based on satellite airplay.

- 2% D. He needs to get in touch with the original label that released the recordings to get paid.

Six in ten correctly answered C, that this session player is eligible to receive royalties from webcasts and satellite airplay via the [AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund](#), which disburses royalties to session and background players.

However, 38% of respondents thought he didn't get anything at all. Again, this is a reasonable guess; he was paid a fee for his skills as a drummer at the time of the recording session and would not receive any additional royalties for the retail or digital sale of these various recordings so many years after the initial release. But the Digital Performance Right in Sound Recordings Act of 1995 established a payment to background singers and session musicians when music is digitally *performed*. When music is played on digital platforms like Sirius XM or Pandora, 5% of the royalty payments are sent from SoundExchange to the [AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund](#), for distribution to the session players and background singers that performed on these tracks, whether they are union members or not. This would include our hypothetical session drummer player. This question highlights, once again, the how performances and sales/downloads are treated differently.

Public performance licenses and permissions

Do DJs need permission to perform mashups publicly? A question on the hard quiz presented this increasingly common scenario.

There's a DJ that specializes in gigantic mashups of recognizable songs. Does he need permission from rightsholders to perform these mixes live?

- 28% A. Yes. He needs permission from both the sound recording copyright owner and from the publisher of every song that's in his mashups.
- 7% B. No. This is fair use.
- 2% C. No. These are *de minimis* uses. The samples are so short that they don't need licenses.
- 64% D. No, as long as the venue or festival he's performing at has licenses with the appropriate PROs.**

Given the number of recent lawsuits about sampling, it is no surprise that 28% of quiz takers thought the DJ needed to get permission from publishers and record labels in order to perform the mashups live. Indeed, if this DJ were recording this mashup, he would

likely need permission from both publishers and sound recording copyright owners for *every sample* on the record.

However, the correct answer is D. First, this question has to do with the performance of a mashup, not a “fixation”; the DJ is not making a new work. And, while there is a performance license requirement to perform the compositions used in the mash-ups, the license is generally obtained by *the venue* in which he is playing, not by the individual DJ. In other words, the venue that is making this public performance happen must have the proper live music venue licenses with the PROs—ASCAP, BMI and SESAC. The songwriters who wrote the original songs used in these mashups are compensated for this performance of their songs through the collection and distribution of live music venue licensing fees by their PROs.

Public performance royalties for theatrical performances of movies

The expert quiz moved beyond the common misconceptions to ask questions about a handful of quirky copyright and licensing issues that are unique to how the US music industry operates. Take this question about music in theatrical performances of movies, for example:

A 1980s rock band has their big 80's hit used in a current major Hollywood movie. Their 1980s record label still owns the sound recording and, under their contract, they split the synch licensing fee with the label 50/50. They also wrote the song. Do the band's songwriters receive any public performance royalties when the movie is shown in US movie theatres?

60% A. Yes, movie theatres pay blanket license fees to ASCAP, BMI and SESAC. Each PRO then passes along public performance money to songwriters based on the number of screens the movie is shown on in the US.

40% B. No

We only gave quiz takers two choices here, but the answer is counter-intuitive so the majority of respondents – 60% – got it wrong.

Six in ten respondents assumed that movie theatres, just like almost all other public venues in the US in which music is heard or performed, have blanket licenses with the PROs ASCAP, BMI and SESAC, each of which would pass along public performance royalties to this band's songwriters for any music that's heard in the movie.

But in the US, movie theatres and theatrical movie screenings have a special status. There are no separate public performance royalties generated when music is performed in a

movie theatre showing of a motion picture. This is the outcome of court consent decrees between the Department of Justice and the PROs that determined that music copyright owners were required to issue public performance licenses to movie producers. As a result, the license to perform the compositions publicly in movie theaters is, essentially, bundled into the rights acquired by the motion picture company when they license music for use in the movie. The answer key in the quiz provides links for respondents to read more about the history of this exemption.

So the correct answer is C. Because of policies that were set in the 1940s, the songwriters in this 1980s band don't get any public performance royalties when this movie is shown in US movie theatres. However, when that same movie is performed anywhere else, like on TV, a performance license for the music is required.

Public performance royalties for movies outside the US

The next question asked quiz takers if the rules changed when this movie was shown in foreign markets.

This is a big movie, so it gets screened in many foreign markets. Do the songwriters receive any public performance royalties when the movie is shown in foreign movie theatres?

68% A. Yes, they receive public performance royalties for viewings of the movie that occur in foreign movie theater from their PRO.

32% B. No

In this case, 68% correctly chose A; that the songwriters in this band *would get* public performance royalties for foreign screenings of the movie.

In most countries outside the US, motion picture theaters are required to pay performance royalties for music used in theatrically distributed films. These fees are collected by the local performing rights society in each country (PRS in England, GEMA in Germany, SOCAN in Canada, etc.), then through reciprocal agreements with ASCAP, BMI and SESAC, the foreign societies will remit the writer's share of such monies to the US PROs, which will then pay these theatrical performance royalties as a foreign distribution to their writer members.



What we can learn from these quiz answers

The answers to these quiz questions suggest three underlying issues:

First, **there is a piecemeal understanding about the difference between musical compositions and sound recordings**, and the rights and revenue associated with each. Respondents either did not know that a recorded piece of music has two copyrights, or they simply got confused about the details. As a result, respondents frequently misunderstood the specific rights and royalties handled by intermediaries like the PROs or SoundExchange.

Second, **there are differences between a retail sale, a download, a performance and a stream that are frequently imperceptible to the user, but essential to how the money flows**. US Copyright law provides a copyright owner with a bundle of rights, but downloads, analog performances, non-interactive streams and on-demand streams are each treated differently. Despite the increasing futility in drawing a clear line between these various interactions with music, the distinctions do exist, and they do determine who gets paid, by whom, and how much. Many quiz takers – understandably – mixed up who gets paid for downloads and who gets paid for digital performances.

Third, some incorrect answers suggest **a lack of awareness about the changes in the digital landscape that have altered the way that money flows back to creators**. This finding should be of particular concern to musician and advocates; in a shifting landscape, professional musicians could be leaving money on the table simply because they are unaware of all of the revenue streams – [existing, expanded and new](#) – for which they are eligible. A stronger understanding of the landscape also makes musicians better advocates for their own future.

In an environment where changes to copyright law, licensing, and digital business models are affecting musicians' earning capacity, it is important that musicians and advocates not only recognize the knowledge gaps, but that we **build musician-friendly tools to help reduce the confusion and nurture an informed creative class**.

We also urge those who write, or speak, or report on these issues to **properly acknowledge the complexity**. Far too often, blog entries or news articles will speak of Spotify and Pandora as comparable streaming services when, in fact, they operate under completely different licensing schemes that pay rightsholders through different conduits. Or, bloggers and journalists will write about royalties from new services without differentiating between royalties earned on the musical composition side and those earned on the sound recording side. The quiz makes it quite clear that we all need to be diligent and thorough in our writing and reporting about these complex issues – even if it

takes repeating the basics – to ensure that musicians have the correct, fundamental understanding of today’s musical landscape.

FMC has a fourteen-year history of developing educational materials for musicians. We use everything from [blog posts](#) to [fact sheets](#), [infographics](#), [video content](#), and [in-person seminars and events](#) to convey information. We crafted these [quizzes](#) in June 2013 as a natural extension of our [Artist Revenue Streams project](#), a multi-method, cross-genre examination of musicians’ earning capacity that has documented the [array of revenue streams](#) available to US-based musicians and composers.

FMC also stands ready to work with any organizations and associations that wish to present information to their constituents. We are happy to customize the quiz questions for any audience, or connect colleagues with experts who can carefully explain the contours of the US-based music economy.