

ACCESSING ROYALTIES:



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MARCH 2017

An Index for Music Industry Participants on Vancouver Island

The logo for the Island Musicians Association (IMIA) features the letters 'IMIA' in a large, white, serif font. The background is a vibrant red with a stylized, dark red treble clef and a red musical staff line. A black microphone is partially visible in the bottom left corner.

IMIA

Island Musicians
Association



DISCLAIMER

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DID YOU PERFORM ON A RECORDING?

Are you a performer on a recording? If yes, [CLICK HERE](#)
Are you a record label that owns the rights to a recording? If yes,
[CLICK HERE](#)

Performer: anyone who provides an audible contribution to a recording. Certain inaudible contributions, such as conducting, are also included. This does not include recording engineers or mixers.

OR

DID YOU WRITE OR COMPOSE A MUSICAL WORK?

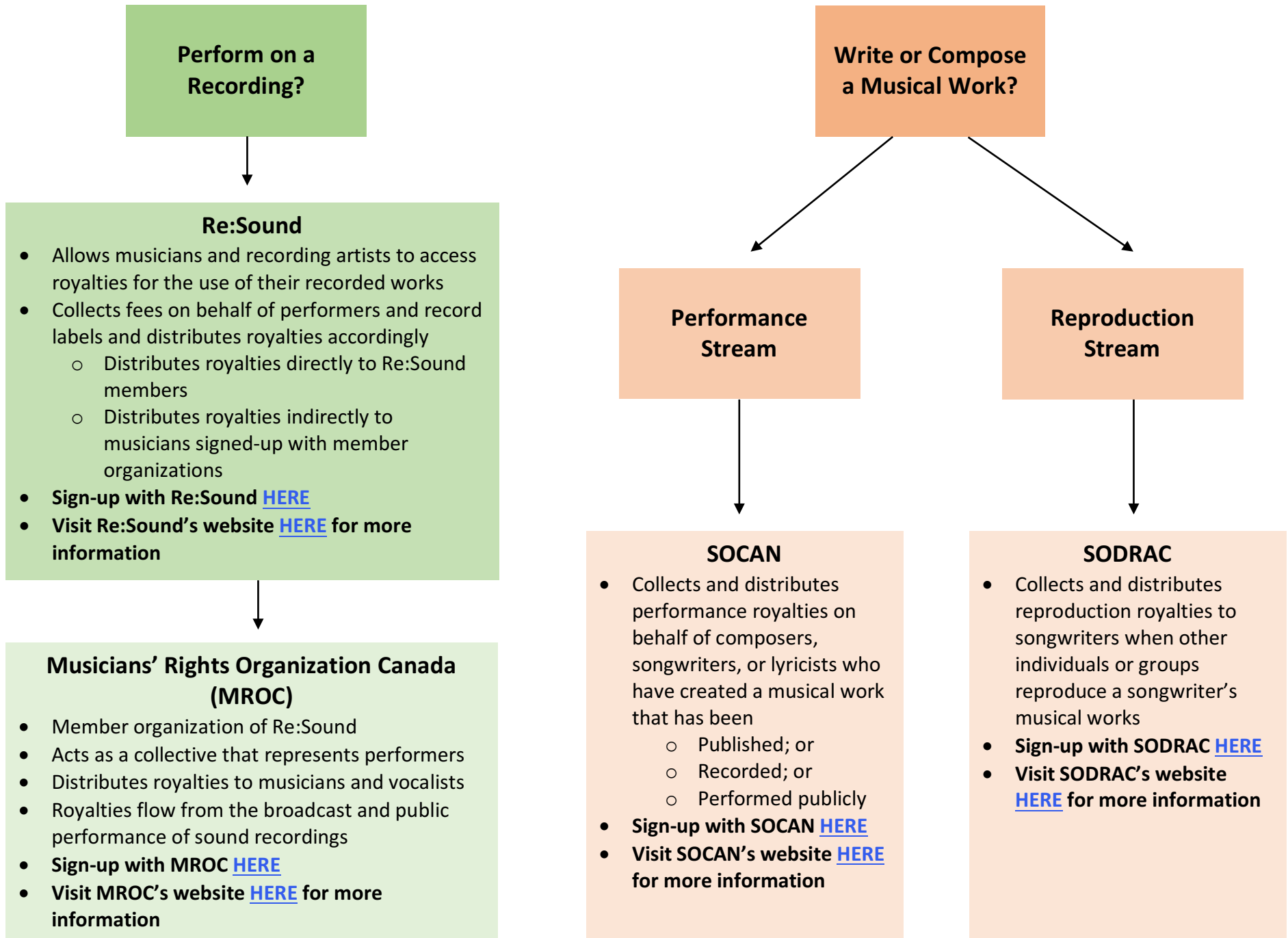
Did you compose a musical work? If yes, [CLICK HERE](#)
Are you a music publisher? If yes, [CLICK HERE](#)

Musical work: the lyrics and/or musical notes in a composition

Music publisher: the business partner in a musical composition. A music publisher will enter into a songwriter-publisher agreement with the songwriter in which the songwriter assigns ownership and control of the copyright protected musical works to the publisher in exchange for a percentage of the income that results from the use of the musical works

[OVERVIEW FLOW CHART](#)

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For a detailed schematic of music industry participants and organizations, see [APPENDIX A](#)

CONTRIBUTIONS TO A RECORDING AS A PERFORMER OR A RECORD LABEL

Re:Sound

- Re:Sound collects royalties for performers.
- To obtain the royalties you are entitled to, you must register with Re:Sound.
- For registration requirements for Re:Sound [CLICK HERE](#)
- **Alternatively:** If you have already registered for one of Re:Sound's 3 member organizations (see below), your royalties will be distributed to you directly from the member organization.

MROC

Musician's Rights Organization Canada - [CLICK HERE](#)
Visit their website [HERE](#)

ACTRA RACS

Recording Artists' Collecting Society
Visit their website [HERE](#)

ARTISTI [Quebec only]

Visit their website [HERE](#)

Collecting Royalties as a Performer Through Re:Sound

Re:Sound:

- Advocates and collects fees on behalf of music creators (featured, background, and recording artists) and record labels.
- Reaches out to businesses to inform them of legal obligations to pay for the use of recorded music.
- Collects fees on behalf of artists and record companies.
- Synthesizes data pertaining to usage of recordings.
- Distributes royalties.
 - *Directly* to music creators
 - *Indirectly* through member organizations (MROC, ACTRA RACS, Artisti)
- Through international partnerships ensures Canadian labels get paid when recordings are played outside of Canada.

Why Sign Up with Re:Sound?

Re:Sound allows musicians and recording artists to access royalties for the use of their recorded works. It is impossible for music creators to individually track the use of their recordings and collect the funds due to them. Re:Sound enables music creators to access the wide and complex base of revenue available to them.

How to Sign Up with Re:Sound?

1. Music creators *not* currently signed up with any one of Re:Sound's member organizations (*MROC, ACTRA RACS, or Artisti*) can sign up with Re:Sound by [CLICKING HERE](#)
2. After completing the online registration form you will be asked to print, sign, and return by mail or email:
 - An agreement form and valid photo ID
3. Submit a repertoire list of any recordings you appear on.
4. Search Re:Sound's database for tracks you appear on by [CLICKING HERE](#)

Note: If you are signed up with one of Re:Sound's member organizations there is no need to sign up for Re:Sound. You are already receiving the benefits of Re:Sound membership.

Sources of Royalties

From Music Users:

- Radio (Commercial, CBC, Satellite and Paid Subscription)
- Background Music
- Live Entertainment (conventions, fashion shows, karaoke, festivals, circuses/ice shows/ fireworks displays, parades, public areas/ streets/parks)
 - Only covers the use of recorded music, NOT live performance
- Accompaniment for Dance or Fitness Activities
- Music Streaming

From the Canadian Private Copying Collective (CPCC) www.cpcc.ca/en/the-cpcc/private-copying-tariff

- Private Copying Levy
 - Royalties arising from private copies made by individuals for personal/private use

Royalties paid to Re:Sound



Re:Sound

www.resound.ca

- Re:Sound collects fees and royalties within Canada and internationally that a performer is entitled to
 - A Performer is anyone who provides an Audible Contribution to a recording. This does not include recording engineers or mixers
- To collect these royalties, you must register with Re:Sound or one of their member organizations
- To be eligible:
 - The sound recording must be entirely recorded in Canada, a Rome Convention country, or a WPPT country. A list of eligible countries can be found by [CLICKING HERE](#)
 - Or, the maker (record label) of the sound recording must be a citizen, resident or headquartered in any of the countries listed [HERE](#)

Royalties distributed to member organizations



Artisti

Distributes royalties from:

- Radio
- Background Music
- Private Copying Levy

MROC

Distributes royalties from:

- Radio
- Background Music
- Live Entertainment
- Accompaniment for Dance/Fitness
- Music Streaming
- Private Copying Levy

ACTRA RACS

Distributes royalties from:

- Radio
- Background Music
- Live Entertainment
- Accompaniment for Dance/Fitness
- Private Copying Levy

MROC

Musician's Rights Organization Canada (MROC) has the primary objective of distributing royalties to musicians and vocalists. They accomplish this by paying musicians and vocalists for the *performance* of their *recorded* musical works. Royalties primarily flow from the *broadcast* and *public performance* of sound recordings.

Collecting Royalties as a Performer Through MROC

The Royalties that MROC distributes flow from tariffs and levies set by the Copyright Board of Canada. There are two main streams of royalties that are available to musicians and vocalists flowing from the Copyright Board's tariffs:

1. **Neighbouring Rights**
2. **Private Copying Levies**

Neighbouring Rights Stream

Neighbouring rights refer to the rights of performers (musicians and vocalists) and sound recording makers (record labels) to receive payment for the broadcast or public performance of their recordings. Neighbouring rights revenues are collected by Re:Sound. For more information on Re:Sound, [CLICK HERE](#). Under this stream, your sound recording must meet the criteria set out below to be eligible for payment according to the requirements in the Canadian *Copyright Act*. The sound recording was:

1. First published (made available to the public) less than 70 years ago;
2. Published (made available to the public) within 50 years of the end of the calendar year in which first fixation of the sound recording occurs;
3. Not more than 100 years has passed since the first fixation of the sound recording;
4. The term of sound recordings published prior to June 23, 2015 will be extended from 50 years from first fixation to 70 years from first publication, provided that the sound recordings must not have expired under the old rules prior to the change in the law on June 23, 2015.

Private Copying Levies Stream

Under the *Copyright Act*, it is legal for individuals to copy recorded music for their own personal use. As a result, rights holders (performers), are entitled to receive remuneration in the form of private copying royalties from levies established by the Copyright Board. The levy is collected from manufacturers and importers of blank audio media including CDs, tapes, vinyl etc. The Canadian Private Copying Collective (CPCC) collects the levy and disburses the royalties to Re:Sound. Re:Sound then distributes the amounts collected to musicians and vocalists via collectives, including MROC.

For additional information on copyright law and Canada's *Copyright Act*, see [APPENDIX B](#).

Why Sign Up with MROC?

Musicians and vocalists cannot collect their neighbouring rights and private copying royalties from individual users. Rather, they must sign up with a collective, such as MROC, that represents performers.

How to Sign Up with MROC?

To sign up with MROC, a musician or vocalist must complete two forms:

1. Appointment and Authorization Form
2. Repertoire Registration Form

The Appointment and Authorization Form can be completed online by [CLICKING HERE](#)

- This form can also be downloaded by [CLICKING HERE](#)

The Repertoire Registration Form can be downloaded by [CLICKING HERE](#)

The Appointment and Authorization Form will require providing the following information:

- Performer/professional name and legal name
- Band/group name (if applicable)
- Social insurance number
- Date of birth
- Citizenship
- Phone, e-mail, website (if applicable)
- Mailing address
- Province/territory of residence
- Contact person
- Cheques made payable to

The Repertoire Registration Form will require providing the following information:

- Song title/track name
- Artist and/or band
- Maker (producer who paid for the recording i.e. record label)
- Date of release (year at minimum is necessary)
- Name and location of recording studio
- *Name of each featured artist on the recording
- *Name of each background (non-featured) artist on the recording

Note: If a spreadsheet, liner notes or recording contract shows who was involved in the recording, these may be submitted to MROC along with the Repertoire Registration Form. Upon completion of the Appointment and Authorization Form and the Repertoire Registration Form, return them to MROC by mail, fax, or email. [CLICK HERE](#) to access MROC's contact information. Once MROC has accepted the forms, they will email you a password that will allow you to register new sound recordings through the Online Repertoire Registration Form as you record them. To access MROC's member sign-in page, [CLICK HERE](#)

WRITING AND COMPOSING MUSICAL WORKS

There are 2 revenue streams for songwriters: Performance and Reproduction

Performance revenue stream:

- SOCAN collects and distributes performance royalties to songwriters when other individuals or groups perform that songwriter's musical works (SEE BELOW for more information on SOCAN).

Reproduction revenue stream:

- Reproduction royalties and tariffs are collected and distributed to songwriters and publishers by CSI, a joint venture of the organizations CMRRA and SODRAC. These royalties arise when other individuals or groups reproduce a songwriter's musical works. To learn more about SODRAC and the reproduction revenue stream for songwriters, [CLICK HERE](#)

Note: If you are a songwriter, it is likely that you will want to register for both of these streams.

Performance Revenue Stream for Songwriters

Royalties for Writers and Composers Collected by SOCAN

To sign up for SOCAN you must be:

1. A composer, songwriter, or lyricist; who has
 2. Created a musical work or a part of a musical work that has been:
 - a) Published; or
 - b) Recorded; or
 - c) Performed (or will be) in a public form
- Members assign their rights to SOCAN to collect royalties on their behalf, and SOCAN makes royalty payments 4 times per year.
 - Membership is free for music creators who apply online.
 - Need to provide your personal information (name, DOB, address, e-mail address).
 - SOCAN will e-mail your member contract for review.
 - Sign up with SOCAN by [CLICKING HERE](#)

When and How Much Will SOCAN Pay?

- An artist's amount payable will vary depending on factors such as the length of the musical work, the number of plays, and where the musical work was played (i.e. radio station, sporting events, etc.).
- Commercial radio stations monitor continuously using Nielsen BDS, and in order for your works to be captured by this system you must be registered with Nielsen BDS
 - For more information on Nielsen BDS, [CLICK HERE](#)
- Smaller radio stations such as campus radio are required to provide sample programming to SOCAN each quarter.
- A detailed explanation of how members receive royalties from SOCAN can be found [HERE](#)

Reproduction Revenue Stream for Songwriters

Royalties for Writers and Composers Collected by SODRAC

To join as an author (this title includes authors and composers of musical works), you must:

- Be an author or coauthor of music or lyrics of at least one musical work published by a musical publisher, OR;
- Be an author or coauthor of music or lyrics of at least one musical work commercially recorded and sold, OR;
- Be the author or coauthor of music or lyrics of at least one musical work that has been recorded or is being recorded and that will be sold commercially in the near future, OR;
- Have acquired, upon the author's death, by will or under the law, the succession rights, title to and interest in a work described in the above paragraphs.
- Note: if you are a member of a band or group who are composers or authors, each individual must register separately
- If any of these apply to you, you must register with SODRAC to be able to receive your royalties. To register with SODRAC as an author, SEE BELOW.

How to Sign Up with SODRAC as an Author

- To obtain the royalties you are entitled to as an author or composer, you must register with SODRAC
- In order to complete the registration process, you will need to complete the following:
 - Membership Application form
 - Information Sheet
 - Affiliation statement to the Articles and Bylaws of SODRAC
 - Restriction on Contribution, authors musical works - Private copying (if applicable)
- The registration process will require personal information such as Name, Address, and Social Insurance Number
- The registration process will also ask you to examine the Articles and Bylaws of SODRAC, which can be accessed by [CLICKING HERE](#)
- The necessary registration documents can be accessed by [CLICKING HERE](#)
 - The registration forms can be submitted by mail to the address listed within the forms, or by fax to 514-845-3401
 - If any further assistance is required, SODRAC member services may be contacted by telephone at 514-845-3268 ext. 240 or by email at: members@sodrac.ca

ROYALTIES FOR MUSIC PUBLISHERS

Collecting Royalties as a Music Publisher from SODRAC

To join as a publisher, you must:

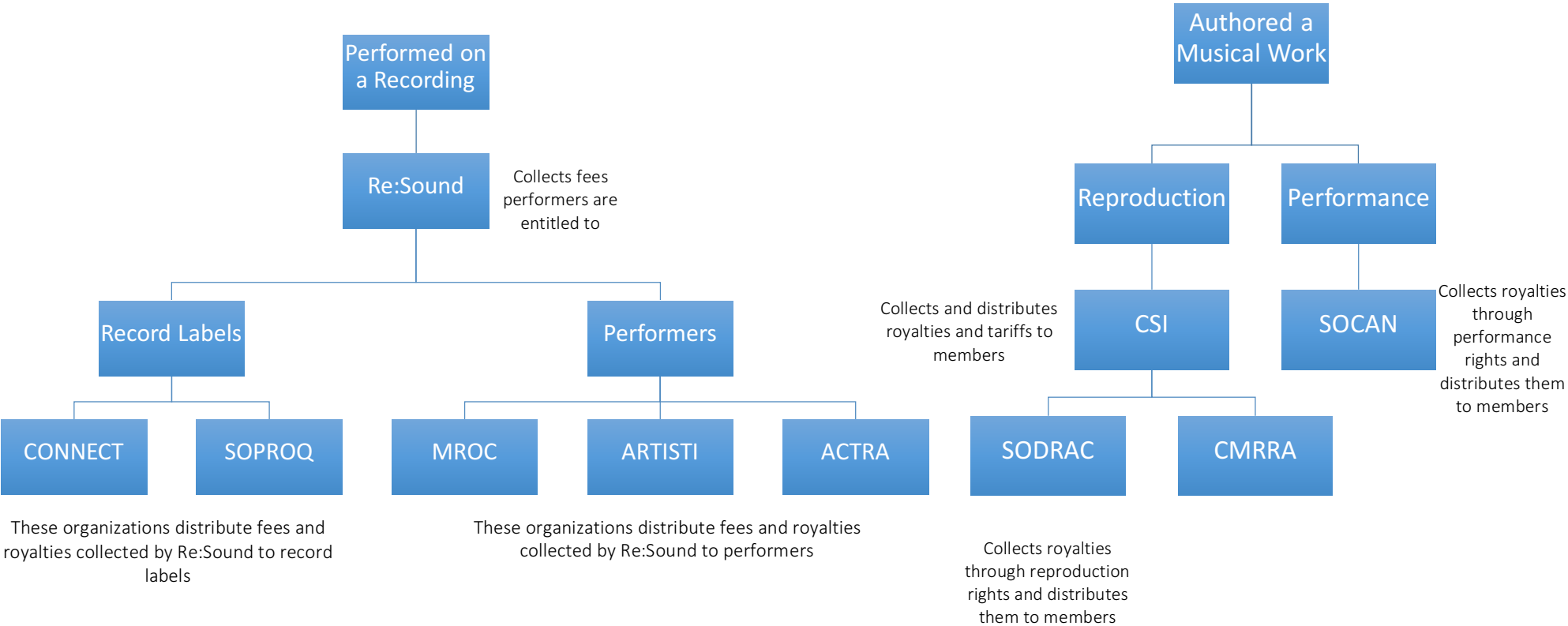
- Present the publishing agreement(s) of five original musical works that are recorded and commercially sold or in the process AND
- Pay the membership fees of \$50

If you meet these criteria, you may register to receive your royalties. To register with SODRAC as a music publisher SEE BELOW

How to Sign Up with SODRAC as a Music Publisher?

- To obtain the royalties you are entitled to as a music publisher, you must register with SODRAC.
- **In order to complete the registration process, you will need to complete the following:**
 - Membership Application form
 - Information Sheet
 - Affiliation statement to the Articles and Bylaws of SODRAC
 - Restriction on Contribution, authors musical works - Private copying (if applicable)
- **It will also require:**
 - A copy of your publishing contract(s) (for a minimum of five works)
 - A copy of your business certificate of incorporation or registration
 - A cheque for \$50.00, plus applicable taxes, payable to SODRAC 2003 Inc.
- The registration process will require personal information such as Name, Address, and Social Insurance Number.
- The registration process will also ask you to examine the Articles and Bylaws of SODRAC, which can be accessed by [CLICKING HERE](#)
- The necessary registration documents can be accessed by [CLICKING HERE](#)
 - The registration forms can be submitted by mail to the address listed within the forms, or by fax to 514-845-3401
 - If any further assistance is required, SODRAC member services may be contacted by telephone at 514-845-3268 ext. 240 or by email at: members@sodrac.ca
- **Note:** If your publishing contracts are available immediately, please attach a copy thereof to your completed membership application. If you do not have a copy of your publishing contracts, please submit your membership application without them and submit them at a later date

APPENDIX A: A Flow Chart for Music Industry Participants



APPENDIX B:

Rights in Copyright Law

Why Does Copyright Law Matter?

- Allows the creators of original works exclusive rights for use and distribution¹
- Gives creators of original works rights to remuneration (economic rights)
- Gives creators of original works rights to integrity² of work or performance (moral rights)

What are Economic Rights?

- The monetary benefits derived from the rights held by musician, performer, or sound recording maker³

What are Moral Rights?

- The creator's right to integrity of their work or performance
- Prevents works from being distorted, mutilated, or modified to the prejudice of the creator's honour or reputation⁴
- Includes right to prevent a song or performance from being used in association with a product, service, cause or institution to the prejudice of the creator's honour or reputation⁵
- Includes right, where reasonable in the circumstances, to be associated with the work or performance as its author or performer by name, as well as the right to remain anonymous⁶

How Does Copyright Pertain to Creators of Musical Works?

- Musical works are protected under "works" in the *Copyright Act*.⁷
- Unwritten musical works (e.g. sound recordings) and written musical works (e.g. sheet music) are recognized and afforded the same protection by the *Copyright Act*.⁸
- The copyright owner of a musical work has the sole right to:
 1. Produce (such as in sheet music)
 2. Reproduce (such as in digital audio reproductions)
 3. Perform (such as in live performances or recordings)
 4. Make sound recordings of the work

¹ Copyright Act Section 3

² Copyright Act Section 28.2(1)

³ Copyright Act Section 2

⁴ Copyright Act Section 28.8(1)

⁵ Copyright Act Section 28.8(1)

⁶ Copyright Act s.14.1(1) and s. 17.1(1)

⁷ Copyright Act Section 5

⁸ *Canadian Cable Television Assn. v Copyright Board* (1993)

5. Communicate work to the public via telecommunication
6. to authorize any of the listed acts 1 – 5.⁹

How Does Copyright Pertain to Performers of Musical Works?

- Performances are protected under the *Copyright Act* (includes both moral and economic rights).
- Performer’s copyright to his/her performance includes the sole right to:
 1. Record the performance
 2. Make recordings of the performance available to the public via telecommunication
 3. Sell recordings of the performance
 4. Authorize any of the listed acts 1 – 3.

How Does Copyright Pertain to the Maker of a Sound Recordings?

- The maker of a sound recording has a copyright in that recording.
- This copyright allows the maker to:
 1. Publish the recording for the first time
 2. Reproduce the recording in any material form
 3. Rent the recording
 4. Sell the recording
 5. Make the recording available to the public through telecommunication
 6. Authorize any of the listed acts 1 – 5.¹⁰

Do I Qualify for Copyright?

- To qualify for copyright, there are two possibilities to look for:
 1. At the time of making the work, were you a **resident, citizen** or **subject** of a treaty country (Canada is a treaty country)?
 2. Was your work first **published** in a treaty country?¹¹
 - “published” means copies of the work were made available to the public (does not include performance to the public).¹²

How Long Does Copyright Last?

- Life of the author plus 50 years following the end of the calendar year of the author’s death.¹³ Where there is more than one author the 50 years runs from the date of the death of the last surviving author.
- Note: Under the terms of the Trans Pacific Partnership (TPP) copyright duration was to be extended to life of the author plus 70 years following the end of the calendar year of

⁹ Copyright Act Section 3

¹⁰ Copyright Act Section 18

¹¹ Copyright Act Section 5

¹² Copyright Act Section 2.2(1)(a)(i)

¹³ Copyright Act Section 6

the author's death. Although it appears that the TPP is not proceeding, it is anticipated that a change to copyright duration is likely to be enacted in the future.

- If work has *not* been published at the time of the author's death, copyright lasts 50 years following the end of the calendar year after its publication.¹⁴
- A special copyright extension has been enacted for sound recordings. If a sound recording in which a performance is fixed is published (made publicly available) before the copyright expires, the copyright continues until the earlier of the end of 70 years after the end of the calendar year in which the first such publication occurs and the end of 100 years after the end of the calendar year in which the first fixation of the performance in a sound recording occurs.¹⁵

What If a Work Has More Than One Author?

- If two or more musical artists collaborate in producing a musical work, there may be joint authorship.
- For joint authorship:
 1. The contribution of one author must not be distinct from the contributions of the other author(s).¹⁶
 2. The authors must make a significant contribution of original expression to the work.¹⁷
 - However, *equal* contribution to the work is not required.
 3. There must be mutual intent to co-author the work.
- Joint authors have the same copyright as individual authors.

Infringement of Copyright

Presumption of an Existence of Copyright

- If a songwriter, performer or creator believes that someone has infringed their copyright they may bring an action in court. It is up to the supposed infringer to prove that a copyright does not exist. Otherwise, the work is deemed to be protected by copyright.¹⁸
- Registration of Copyright is optional, not compulsory. However, a certificate of registration of copyright is evidence that the copyright subsists and that the person registered is owner of the copyright.¹⁹

¹⁴ Copyright Act Section 7

¹⁵ Copyright Act Section 23(1)(b)

¹⁶ Copyright Act Section 2

¹⁷ *Neudorf v Netzwerk Production Ltd.* 1999 CarswellBC 2774, [1999] BCJ No 2831, [2000] 3 WWR 522

¹⁸ Copyright Act Section 34(3)

¹⁹ Copyright Act Section 53(2)

Proving Infringement

- To succeed in the action, the songwriter/ performer/ creator must show:
 1. That she/he had a copyright in the musical work
 2. That it is an original work
 3. That the infringer unfairly copied it, that is, she/he had access to the plaintiff's work before composing her/his own, and that a substantial part of both works is very similar.²⁰

There May Be Grounds for Infringement Where:

- A quantitatively substantial amount of the work that is vital and essential to the work has been copied²¹, AND/OR
- A qualitatively substantial amount of the work or part that attracts a potential purchaser (called the "hook") has been copied.²²

Exceptions to Infringement: Fair Dealing

- Fair dealing allows you to use other people's material for the purpose of research, private study, criticism or review,²³ news reporting,²⁴ education, and satire or parody²⁵ without having to seek the creator's permission. What is "fair" will depend on the circumstances. The courts will normally consider these six factors:²⁶
 1. The purpose of the dealing – Was the use for commercial or research/ educational purposes? If a song or performance was used for commercial purposes it will be considered an infringement. Whereas, if it is used for research or educational purposes it may be considered fair dealing.
 2. The amount of the dealing – How much was copied?
 3. The character of the dealing – Was it a single use or ongoing? How widely was it distributed?
 4. Alternatives to the dealing – How essential was the use of the work? Could the purpose have been achieved without using the work?
 5. The nature of the work – Was there public interest involved? Was it previously unpublished?
 6. The effect of the dealing on the original work – Did the use impact on the market value or sale of the original work?

Note: This information is current as of March, 2017. Note that the law on copyright may change.

²⁰ *Grignon v Roussel*

²¹ *Hawkes & Son (London) Ltd v Paramount Film Service Ltd* [1934]

²² *Cinar Corporation v Robinson*, 2013 SCC 73, [2013] 3 SCR 1168

²³ Copyright Act Section 29.1

²⁴ Copyright Act Section 29.2

²⁵ Copyright Act Section 14.1

²⁶ *CCH Canadian Ltd v Law Society of Upper Canada*, [2004] 1 SCR 339, 2004 SCC 13