“The Broadway Musical: Composer, Lyricist and Songwriter Royalties and Deals”

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Broadway and the Road, a 3.5 billion dollar business in the United States, represents for composers, lyricists and songwriters involved in the field, a significant source of royalties and in the case of a hit, a lifetime annuity. Each year, Broadway produces many new musicals in addition to revivals of musicals from the past. Most of these shows never recoup their financial investment but when a “Hamilton”, "Beautiful: the Carole King Musical", "Wicked", "Jersey Boys", "Lion King", "South Pacific", "Phantom of the Opera" or "Mamma Mia" succeeds, the financial returns can be staggering both for investors as well as creators as well as other royalty participants.

This article will discuss the many different types of music licensing deals, contracts and practices that govern music in the theatre.

Types of Broadway Musicals

Musicals can take many forms with the particular form many times dictating the type of contract and royalty structure received by composers, lyricists and songwriters as well as the music publishers involved. The most common types of musicals are a new show with original music and lyrics ("Hamilton", "Kinky Boots", "A Gentleman's Guide to Love & Murder"), a "catalogue/jukebox musical" which uses pre-existing songs ("Beautiful: the Carole King Musical", “Ain’t Too Proud”," "Rock of Ages", "Jersey Boys", "American Idiot") and shows that combine new compositions with pre-existing works. In many cases, an additional royalty participant will also be involved in cases where the show is adapted from a work in another media such as a book, feature film, television program or comic book (“Moulin Rouge”, "Aladdin", "School of Rock", "Rocky", "Doctor Zhivago", " the Lion King", "Beauty and the Beast", "Spider-Man: Turn Off the Dark", "the Addams Family", “Frozen”, "Dirty Dancing"). This latter category sometimes uses the originally composed music as well as lyrics, other times uses entirely new compositions or utilizes a combination of both old and new.

Weekly Costs of a Broadway Musical

The starting point for most royalty calculations is the weekly operating costs of the musical. These costs are many and determine whether the show is making money, losing money or breaking even on a weekly basis. Most Broadway musicals' weekly operating costs are in the area of $400,000-$750,000 but some shows are known to exceed $1,000,000 in a week.

A representative breakdown of the costs associated with a musical with weekly running expenses of $600,000 are as follows: Physical Production ($49,000/carpentry, electrical, etc.), Salaries ($132,000/cast, general manager, stage manager, press agent, music director, musicians, etc.), Re-Occurring Fees($11,000/ music coordinator, technical supervisor, etc.), Taxes and Benefits($40,000/ union pension and welfare benefits, etc.), Rehearsals and Casting($1,000/ studio rental), Advertising and Promotion($120,000/ artwork, television media, marketing, photography, print media, website, etc.), Theatre Venue Expenses($190,000/fixed weekly theatre charges, theatre share, local musicians and crew, etc.), General and Administrative Expenses($20,000/legal, accounting, payroll expenses, office charges, insurance, etc.), Royalties($35,000/author, producer, director, choreographer, music supervisor, original venue royalty, etc.) and Miscellaneous($2,000).

It is important to note also that there is a huge amount of money expended prior to the show's "opening night" and first week's operating costs. Those are the figures involved when you hear that a musical costs 10 to 20 million dollars in investors' money just to get the show to the Broadway opening. This is the total amount that investors need to recoup prior to the musical returning a profit.

These costs include any option fees paid (book writer, lyricist, composer), possible image and likeness royalties, fees payable to the organization that initially presented the production, scenery, props, costumes, sound, creative fees (lighting, sound, costume and scenic designers, musical supervisor, dance music arranger, orchestrator, choreographer, director, etc.), production fees (general manager, casting directors, production managers, accounting, legal, etc.), rehearsal salaries and fees, theatre rental, hauling and storage and general and administrative costs (executive producer and production consultant fees, office operating costs, payroll service, insurance, etc.). In some cases, the theatre itself has to be reconstructed which can lead to additional costs over and above those related directly to the musical.

Music Licensing Agreements

There are three basic contracts/license arrangements that cover most situations on Broadway. They are (1) the Dramatists Guild of America (DGA) Approved Production Contract (APC), (2) Royalty Pool arrangements and (3) Fixed Dollar royalty shows. Variations of these are found in practically all Broadway productions from original shows, to revivals to "catalogue musicals."

1. DGA/APC:

The Dramatists Guild of America is a professional association of playwrights, composers, lyricists and librettists for the stage. As part of its role, the DGA provides model contracts for all levels of production (Broadway, touring companies, amateur, etc.) and gives advice to members on how their contracts compare to industry standards. The "model contracts" are very comprehensive and are designed to make sure creators receive fair compensation as well as retain significant control over their works. They cover every important area including advance payments, option periods, copyright ownership, royalty adjustments, production rights and subsidiary rights, among others.

The APC contract deals with what happens to productions before, during and after they are produced. When a Producer becomes interested in a property, he or she will enter into an APC to acquire an option to produce the play from the book writer, composer and lyricist. This option provides exclusive rights to produce the play as well as the time frame within which to do so. The APC requires certain minimum payments prior to the actual Broadway opening. The minimum option payments are $18,000 total for the Author (composer, lyricist and book writer combined) for the period of 12 months following the effective date of the contract, $9,000 total for a second consecutive 12-month period and $900 total per month for a maximum of 12 additional consecutive months. Option payments are non-returnable but shall be deductible from royalties.

For the first 12 out-of-town performance weeks prior to the Broadway opening, the composer, lyricist and book writer are guaranteed a total of $4,500 for each full performance week of 8 performances, pro-rated for weeks in which a smaller number of performances is given. Commencing with the 13th week, the three creative participants receive 4.5% of the Gross Weekly Box Office receipts (GWBOR) until such time as all production costs are recouped. Once the show recoups its entire investment plus a return on that investment (normally a figure of 110% of the total), the 4.5% figure is increased to 6% of the GWBOR with the composer, lyricist and book writer each receiving 2%.

A number of additional APC clauses affect royalties including how the initial writer guarantees are treated as well as the possibility of additional payments to the writers based on the amount of capitalization of the show. Keep in mind that the DGA contract is a model contract and not mandatory though numerous productions still use it. Many others use its provisions as a guide or as a starting point for negotiations. Also, for writers of a certain stature, as in other areas of Entertainment, "everything is negotiable."

A good example of how the DGA APC formula works is as follows: A new show opens on Broadway and is a smash hit. It has weekly box office grosses of $1.25 million. The composer and lyricist would receive 3% of this total (2/3 of the 4.5 % royalty figure) prior to full recoupment and 4% of the total (2/3 of the 6% royalty figure) once the show finally recoups its total investment. In this example, the total weekly composer and lyricist pre-recoupment dollar figure would be $37,500 with the weekly post recoupment number at $50,000 (in each case less some minor deductions).

It is important to keep in mind that the copyright ownership of intellectual property is very different in the theatre world than in most other areas of entertainment. To quote the DGA, "The author (book writer, composer and lyricist) shall retain sole and complete title, both legal and equitable, in and to the play and all rights and uses of every kind except as specifically herein provided. Further all contracts for the publication of the music and lyrics of the play shall provide that the copyright be in the names of the composer and lyricist". In recent years though, there have been exceptions to this long standing practice- namely motion picture and television studios where musicals are being made from feature films or television series where all of the original music was written under "work for hire" agreements or where "work for hire agreements" are a company's business norm when hiring writers to create original compositions.

2. Royalty Pools:

The most common type of formula being used on Broadway today is the "Royalty Pool" arrangement whereby all royalty participants (for example, music and lyric writers, book writer, director, choreographer, underlying rights owner, producer, etc.) share in an agreed-upon percentage of the weekly operating profits of the musical with certain guaranteed minimum per-point royalties. The total amount of money in the royalty pool is based on a show's operating profits, which is the difference between the Gross Weekly Box Office and the actual weekly running expenses of the show.

For example, a show grossing $1.25 million in GWBOR with operating costs of $700,000 would have operating profits of $550,000. If the royalty pool percentage for this show was 35%, the royalty participants would receive a total of $192,500 (35% of $550,000) with the investors receiving $357,500 (65% of $550,000).

Once the royalty pool percentage of GWBOR is set, all royalty participants are assigned points in the pool and distributions are made based on the number of points each participant has. If there were a total of 20 points and the composer and lyricist had 3 points each with the remaining 14 points allocated to all other royalty participants, the royalty split on $192,500 would be $28,875 to the composer, $28,875 to the lyricist and $134,750 payable to all others.

In addition, there is a minimum royalty (sometimes referred to as a "point") that must be paid to all royalty participants if the show is not running a weekly profit (i.e., it is breaking even or operating at a loss). This royalty is based on a set dollar value for each royalty point that a participant has in the pool. If the minimum per point value was $500, each party would multiply their points by $500 and that would be their respective royalty for that week. Finally, the royalty pool percentage can be increased once a show achieves 110%-125% full investor recoupment of total capitalization. For example, it can go from a 35% pool to a 40% pool. This minimum royalty clause insures that the royalty participants will receive some compensation during periods when the show is trying to find an audience, is struggling or is just in a temporary "down period". Occasionally, royalty participants may forego or reduce these minimums if it helps to keep the show open.

Royalty calculations and payments are normally paid after each four week performance period commonly referred to as a "cycle".

3. Fixed Dollar Shows/Combination with Royalty Pool:

In situations where the Broadway show is using pre-existing songs, the producer sometimes may try to negotiate a specified weekly dollar payment (e.g. $600 per song per week). Under such a plan, the Producer does not have to deal with a percentage of box office receipts formula or a royalty pool. Whether the show is a hit or a flop, the figure remains the same. These payments are normally based on an eight performance week and are reduced proportionally if there are less than eight.

In the case of so called "Catalogue Musicals", many times two formulas will be used. Well-known songs and songs integral to the story may be paid on a Royalty Pool basis or a percentage of box office receipts calculation (as in the DGA/APC discussed above) whereas other songs in the show receive Fixed Dollar weekly amounts. Obviously, this is an area for negotiation as it can have a significant effect on the amount of royalties a songwriter and his or her music publisher receive especially if the show is a hit.

Since it often takes years to develop a musical for presentation as a first run commercial production, the agreement for use of a pre-existing song in a musical will provide for a development period . For example, an agreement might read that the producer will have two (2) years to have the musical open on Broadway or other first run venue. During this period, the right to make theatrical use of the compositions often will be exclusive to the producer for live theatrical use and there will be a payment made to secure these rights (sometimes in the form of an advance, recoupable from future royalties).

Since you never know how long it is going to take to fully develop a theatrical musical, to say nothing of securing the necessary financing, the producer usually has an option to extend the development period for an additional period of time (one year, two years, etc.) with payment of an additional advance to the composers and lyricists (and/or music publisher, if applicable).

It should also be noted that, depending on the amount of money being paid for the commitment to be able to use the composition or compositions in the “to-be-developed musical,” the rights may or may not be exclusive since exclusivity ties up the composition for use in this area for a period of time with no guarantee that the show will actually be produced. Thus, the money being paid can be a very important issue when the producer introduces the concept of “exclusivity" into the negotiations as opposed to “the non-exclusive right to use the composition” in the show. For example, a license might read " Licensor grants Licensee the non-exclusive, limited right during the term and territory to use and perform the composition in live dramatico-musical performances of the specific Production. Licensor may grant others the right to use the composition in other live stage productions."

Subsidiary Rights/ Producer Vesting

It is important to remember that the Author (a term that includes the book writer, composer and lyricist jointly) owns and controls the play and has the right to exploit the work in other media or in other ways besides First Class live stage performances, including audio-visual productions (motion pictures, television, soundtrack albums), commercial use products (toys, games, clothes), stock, amateur and ancillary performances and performances in other territories, as well as revivals, remakes, prequels, sequels and spinoffs after the expiration of the Producer's right to produce the play in the originally agreed upon territory.

When a Producer has presented the show in the territory for a specific number of consecutive First Class Performances (a combination of out of town performances, previews, official Press Opening in New York City as well as regular performances), the Producer becomes "Vested" in subsidiary rights (assuming the producer is not in breach of any provision of the contract) and becomes entitled to certain decision-making and financial participation rights with respect to the disposition of Subsidiary Rights in the territory and, in some cases, the rest of the world. The Producer's participation is a specific percentage of the Author's compensation for media productions, stock and ancillary performances, amateur performances and commercial use products. The Producer also must be given a reasonable opportunity to consult fully with the Author in connection with the exploitation of such rights. Finally, there are limits placed on the length of time that a Producer continues to participate in Subsidiary Rights with the sole exception of media productions which continue in perpetuity. The "Vesting" concept recognizes the contribution that a Producer's successful production has made to the value of other rights in the play.

Grand Rights Song License Agreement

When a Producer wants to use a pre-existing composition in a musical, the negotiated agreement between the copyright owner (usually the music publisher or administrator) and the Producer is referred to as a Grand Rights License Agreement. (The term "grand rights" is used to distinguish dramatic performances, i.e., those within a musical play or other dramatico-musical work, from non-dramatic or small right performances, which are performances without any dramatic element (that is, no book, staging, costumes, dramatic gestures, etc.) that are most often licensed through a performing right society. This 8-10 page agreement grants the live stage rights (Grand and Dramatic) to the

Producer for a specific Broadway or Off-Broadway production. The publisher grants an "exclusive option" to present an initial First Class (or Second Class) production in the United States and Canada within a specified period of time usually with advances paid if option periods are involved. If the Producer presents the required number of public theatrical performances, Producer will have "Vested" and will have the right to license additional productions throughout the territory.

The royalty structure for the pre-existing composition can either be a fixed dollar amount per week, a royalty pool arrangement with a minimum weekly guarantee or a GWBOR formula pursuant to the Dramatists Guild APC contract. The Producer will also negotiate a Subsidiary Rights clause with specified fees and royalties if the production is licensed for presentation in motion pictures, radio, television, cast albums or any other audio or audio-visual format. The Producer also has the right to arrange the composition provided it does not alter the fundamental character of the composition. Warranties and dispute resolution procedures are also set forth in the agreement.

Writing a New Song for a Musical

The basic structure for this type of agreement is as follows:

As to Services, the writer is hired to compose the music and lyrics to one song for the new musical. Composer is to deliver the composition according to an agreed upon schedule and revise upon request. The Producer, in the case of a non-work-made-for-hire situation, acquires the sole and exclusive license to use the song in any and all versions, productions, etc. of the musical as well as the writer's name and likeness, right of publicity and promo rights on a non-exclusive basis. If the song is included in the official opening night, the Producer's rights will be perpetual. Further, if the song is used, the Producer can place it on cast albums and merchandise and has the right to embody the composition in a motion picture, television or other audio-visual adaptation. If the song is not used in the Broadway opening or a 1st class production within a certain period of time, all rights will revert back to the writer except for any intellectual property elements in the song owned by the Producer. A creative writing fee would be negotiated (e.g. 1/3rd upon signing the agreement, 1/3rd upon delivery of a final version and 1/3rd if the song is included in the full draft of the script) along with royalty clauses either reflecting the APC percentages, a Royalty Pool or some other arrangement as well as all customary composer and lyricist shares of subsidiary rights income as set forth in Article XI of the Dramatists Guild Approved Production Contract (APC). Credit, warranty and indemnification clauses, among others, would also be negotiated.

Underlying Rights Agreement

The Underlying Rights agreement is negotiated when a Producer wants to make a musical from a pre-existing work. Obvious examples are musicals based on motion pictures. Considering that practically all of the original music in a film (score and songs specifically written for the film) are written under work for hire contracts, the underlying rights owner (the studio, for example) already controls all rights in the work including the music. The Underlying Rights/Copyright owner normally receives a royalty percent equal to the composer, lyricist or book writer under the APC contract and is normally in the area of 2% of the GWBOR with a possible increase upon recoupment.

This agreement grants a license to produce and present one dramatico-musical play based upon the motion picture entitled____and upon the original screenplay upon which the play is based. The Grant of Rights includes the worldwide live stage dramatico-musical rights in and to the property and all component parts of the property including without limitation the unrestricted right to adapt , translate, change, rearrange, interpolate in, add to (including the addition of music and lyrics) and subtract from the property all in the Producer's sole discretion. In addition, the Producer has the right to engage persons to write or revise the play based on the property and compose music and lyrics for the play in accordance with the provisions of the overall agreement. The Producer also has the right to exploit the publication, mechanical reproduction, synchronization and small performance rights in the separate music and/or lyrics of the play. The underlying rights owner many times has the right to approve the musical's book writer, composer and lyricist and also participate in a share of the Subsidiary Rights proceeds.

It is important for any composer, lyricist or songwriter who created works under a work-for-hire agreement for the feature film now being made into a musical to determine what royalty structure will govern their compositions if used in the final Broadway production. The possibilities include the Dramatists Guild pre and post recoupment percentages, a royalty pool participation, a creator's Schedule A royalty addendum attached to the original work-for-hire agreement or some other arrangement.

CONCLUSION

Musical theatre-expensive to get into, difficult to write and many times very costly to get out of. But for the composer and lyricist of hit new musicals and past successful shows and songwriters and music publishers of pre-existing compositions used in "catalogue" musicals and dramatic plays, the theatre can be a significant source of income.

Though Broadway hits are "where the money is," there are many examples of shows which never recouped their initial Broadway investment but have lived on for decades in stock, regional, resident, dinner, university, concert, amateur and foreign country performances providing continuing royalties to all those involved. The size and scope of those royalties though are most often determined by the original contract signed. Contracts and licensing arrangements can be, and are, very different based on the type of show, the particular music use and the negotiating tactics, knowledge, experience and bargaining power of the respective parties. Good advice- know your contracts, your license agreements and definitely know and understand the field you are dealing in. Without that knowledge, "fame and fortune may very well be fleeting"- if it comes at all.

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