

Musical Theatre Guidelines

www.writersguild.org.uk

**The Writers' Guild of Great Britain
The Personal Managers' Association
Mercury Musical Developments**

MUSICAL THEATRE AGREEMENTS

GUIDELINES and NOTES

DISCLAIMER

The information and materials contained in these Guidelines and accompanying documents are intended as a general guide only. Nothing in these pages constitutes specific advice and the WGGB/PMA/MMD do not accept any responsibility for any loss which may arise from reliance on such information/materials. No guarantee is given as to the accuracy and/or completeness of the information/materials contained in these pages and the WGGB/PMA/MMD do not warrant that these Guidelines or their contents or the website on which they appear or any hypertext links are virus free or uncontaminated. The WGGB/PMA/MMD advise that you should, where appropriate, always seek expert professional advice from the WGGB or agent member of the PMA or solicitor.

Introduction

These guidelines and notes have the joint endorsement of the Writers' Guild of Great Britain (WGGB) and the Personal Managers' Association (PMA) and Mercury Musical Developments (MMD). We hope they will be useful to all those involved in creating musicals - practitioners and agents alike.

General

It was felt impractical to come up with one draft agreement for musical theatre. There are too many different ways in which musical theatre is produced, each category with a different basis for rights, and each category requiring different guidelines and notes. So instead we offer the following guidelines which should be read in conjunction with the appendices to offer an insight as to the terms and conditions that you should aim for.

Definition of Creators of musical plays

Bookwriter, Lyricist and Composer.

Bookwriter and Lyricist may be one person, or two (or more) separate people.

Lyricist and Composer may similarly be one person, or two (or more) separate people.

As the functions are distinct, even if both functions involve one person, they should be kept distinct in contractual terms.

In these Guidelines, the overall phrase "**the Writers**" is applied to the whole creative team of Bookwriter, Lyricist and Composer as an entity.

Structure of these Guidelines

Contents

- Section A = Collaboration Agreement
- Section B = Notes on Categories of Musicals
- Section C = Norms of Splits/Royalties between Writers
- Section D = Commissioning Fees
- Section E = Billing
- Section F = Approvals
- Section G = Later Collaborators
- Section H = Merged Copyright
- Section I = New Technology
- Section J = Miscellaneous

The Guidelines are followed by -

Appendices

- (a) 1 Model Collaboration Agreement for the Writers
2 Notes on Model Collaboration Agreement
- (b) Explanatory notes from MMD website on Collaboration Agreements
- (c) Checklist for agreements

Summary of Categories (defined in detail in Section B)

1. **Commercial musicals (rights controlled by the producer)**
 - 1.1 Musicals based on underlying rights
 - 1.2 Musicals without underlying rights
 - 1.3 Compilation musicals
2. **Original musicals**
 - 2.1 Created solely by bookwriter/lyricist + composer, with no underlying rights involved
 - 2.2 Musical adaptations of out of copyright works
3. **Original musicals based on underlying rights in copyright, where the Writers (not producer) have acquired the underlying rights**
4. **Subsidised theatre - new musicals initiated by management**
 - 4.1 TNC (the 3 national companies = National Theatre, Royal Shakespeare Company, Royal Court Theatre)
 - 4.2 TMA (managers who engage actors under TMA Subsidised Rep agreement in UK, excluding West End, excluding Scotland)
 - 4.3 ITC (Independent Theatre Council) - smaller scale, mainly non-building based companies.

In the case of categories 2, 3 and probably 4, the Writers will be advised to enter into a **Collaboration Agreement** between themselves prior to making any arrangement with a producer. (Ref Section A below)

A. COLLABORATION AGREEMENT

Refer also attachments in Appendix (a) and (b) for sample agreement and more details.

A Collaboration Agreement should involve the creators of all three creative elements of the musical - book, music and lyrics, regardless of the numbers of people involved, be it just 2, 3, or more.

In summary the points to be covered in a Collaboration Agreement are -

- A.1 Copyright ownership, including whether there is to be a merged copyright ownership of the musical, with all creators owning a proportional share of the whole.
- A.2 Copyright ownership of lyrics and music outside the use of the musical as a whole.
- A.3 Specified shares of division of royalties/advances between the collaborators.
- A.4 Credit provisions for billing/publicity/publication.
- A.5 Approvals - category and details of who is to exercise approvals.
- A.6 Whether any or all of the creators are members of PRS (Performing Right Society) - if so the PRS/MCPS will handle certain small rights by virtue of membership, and total copyright may not be assigned by composer and/or lyricist member without reserving rights already assigned to PRS. (MCPS = Mechanical Copyright Protection Society)
- A.7 Whether a music publisher is involved - the composer may have a pre-arrangement with a publisher for all the composer's oeuvre. This will also involve PRS, and arrangements must be clearly specified.
- A.8 Who is to handle licensing of rights, or whether agents of Writers are to collaborate, and if so, on what basis, and how commission is allocated.
Note: licensing of rights will be affected by category of musical and which rights are controlled (or not) by the Writers, and whether there is a music publisher or PRS involvement.
- A.9 Textual integrity clause.
(i.e. no changes without Writers' permission and any changes accrue to the copyright of the musical.)
- A.10 Arrangements as to what is procedure if Writers disagree between themselves.

B. NOTES ON CATEGORIES OF MUSICALS

B.1 COMMERCIAL MUSICALS (rights controlled by the producer)

B 1.1. Commercial Musicals based on underlying rights

- B.1.1.1 Assignment of copyright may be a requirement if producer owns underlying rights, but there may also be an assignment of copyright to a merged entity which owns the whole musical, in which the Writers have a proportional share of ownership.
(NB refer note H below re merged copyright)
- B.1.1.2 Assignment of lyrics should be resisted, in favour of a perpetual licence of use of lyrics in the musical but not otherwise.
- B.1.1.3 Royalties split must be specified, it being recognised that this will be constrained by producer's deal for underlying rights which will have a pre-arranged position.
- B.1.1.4 If producer acquires worldwide rights in all languages, there should be approval of identity of translators, and ultimately of translations, reserved to bookwriter and lyricist.
- B.1.1.5 Provide for cast album. (see note J.1 below)
- B.1.1.6 Provide for "making of" documentaries.

B.1.2 Commercial Musicals without underlying rights

- B.1.2.1 Resist assignment of copyright (except to an entity part owned by the Writers).
- B.1.2.2 Royalties should apply to the Writers only, and in specified shares.
- B.1.2.3 Ref B.1.1.4 re foreign rights and approval of translators etc.
- B.1.2.4 Provide for Cast album. (see note J.1 below)
- B.1.2.5 Provide for "making of" documentaries.

B.1.3 Commercial Compilation musicals

These use existing songs from either

- (a) the repertoire of star who is subject of musical (e.g. *Jailhouse Rock*), probably songs in separate ownership from several sources,
- or
- (b) a composer's catalogue of songs (e.g. *Mamma Mia*) and in either case with special book written to link material.

Book writer should expect maximum of 1/3rd of total hypothetical royalty of, say 6% = 2% for book.

Individual songs will share pro rata on time, on most favoured nations basis - for example 5% rising to 6% on recoupment (see note page 7 re "recoupment"); or may be on basis of fee per song per performance (or per week of 8 performances), instead of royalty on gross box office.

Note: "most favoured nations basis" = the same basis for all

B.2 **ORIGINAL MUSICALS**

(= no underlying rights, or adaptation of an out of copyright work)

Created solely by bookwriter/lyricist + composer, with no underlying rights involved.

B.2.1 Copyright owned by creators in agreed percentages.

B.2.2 Essential to have a Collaboration Agreement.

B.3. **ORIGINAL MUSICALS based on underlying rights in copyright, where the Writers (not producer) have acquired the underlying rights**

B.3.1 Copyright retained by creators in agreed percentages but subject to arrangement they have entered into for underlying rights.

B.3.2 Could be an eventual merger of copyright ownership with underlying rights, but this would be unlikely prior to presentation in a first class production for an agreed number of qualifying performances.

(NB refer note H below re merged copyright)

Note: “first class production” = production in West End, and/or major tour, and/or major subsidised production

B.3.3. Collaboration Agreement essential.

B.4. **SUBSIDISED THEATRE - new musicals initiated by management**

There are 3 categories of subsidised theatre minimum terms agreements:

B.4.1 **TNC** (the 3 national companies = National Theatre, Royal Shakespeare Company, Royal Court Theatre)

B.4.2 **TMA** (managers who engage actors under TMA Subsidised Repertory agreement in UK, excluding West End, excluding Scotland)

B.4.3 **ITC** (smaller scale, mainly non-building based companies - only some of ITC members are of Approved Manager status and bound by ITC/WGGB agreement)

B.4.4. In all the above cases guidelines should be -

B.4.4.1 Copyright retained by creators as subsidised companies unlikely to acquire rights beyond English language to do their own productions, possibly with overseas options (English Language).

B.4.4.2 Collaboration Agreement may be advisable in respect of rights outside scope of subsidised producers.

B.4.4.3 Collaboration Agreement may need to involve underlying rights owners if they are agreeable.

B.4.4.3. Approval of any commercial producer if musical moves out of subsidised sector into West End.

C. **NORMS OF SPLITS/ROYALTIES BETWEEN WRITERS**

It is stressed that the splits and shares of income (particularly in relation to music publishers) are negotiable; the figures quoted are not invariably standard but are those to try to achieve.

C.1 **Splits of income between Writers**

C.1.1 1/3rd each for music, books, lyrics.

C.2 **Grand Rights* (= rights of musical staged as a whole) *(see note p.7)**

C.2.1 **First class rights (these will be controlled by producer)**

Rate of royalty = ideally

Pre recoupment* 6%, rising to 10% post recoupment*

or

Pre recoupment 6%, rising to 8% at 100% recoupment, and to 10% at 150% recoupment.

**Note: Royalty pool may be imposed -
Royalty pools are a complex subject and professional
guidance should be obtained.**

***Note: "Recoupment" - see note on page 7**

C.2.2 **Second Class Rights = includes touring, repertory and amateur**

**These rights may or may not be controlled by producer
and/or publisher, depending on category of musical.**

Repertory and Amateur

C.2.2.1 (if controlled by producer)

40% or 50% of producer's net receipts.

C.2.2.2 (if controlled by Writers)

Repertory - 10% royalty (or 12% maximum) of gross box office.

Amateur - either fee per performance or royalty of 12.5% - 15% of gross box office subject to a guaranteed minimum fee per performance.

C.2.2.3 (if controlled by publishers)

Publisher will charge licensee a royalty of 12.5% - 15% of gross box office subject to a guaranteed minimum fee per performance.

Performance royalties/fees will be split 75/25 between Writers/Publisher.

Hire fees split 50/50.

C.3 **Small Rights* - usually handled by PRS/music publisher**

***(see note p.7)**

C.3.1 Music publisher split

75/25 Writers/Publisher for mechanical and synchronisation income and all other income not already covered below.

- C.3.2. PRS split 50/50 accounting between PRS/Publisher, but Publisher would pass back 50% of its 50% to Writers, so works out at gross 75/25.
- C.3.3. If Producer has music publishing rights, splits would be negotiable and could be 80/20 with the 80% covering Producer as well as Writers, and 20% to the Publisher.
- C.3.4 Sheet Music
Lyricist and Composer only, sharing 50/50.
- C.3.4.1 Sales
Lyricist + Composer customarily receive 12.5% of retail price.
- C.3.4.2 Hire Fees
Split 50/50 between (a) Lyricist+Composer and (b) publisher.
- C.3.5 Libretto
Bookwriter and Lyricist only, sharing 50/50 - unless any involvement of underlying rights owners.
- C.3.5.1 Sales
Bookwriter + Lyricist usually 10% of retail price.
- C.3.6 New technology rights - part of 75/25 split per C.3.1. e.g. Ring tones now an additional source of income. MCPS licenses ring tones (real tone, true tone etc). (Refer note I below re New Technology)

***Note re Grand Rights and Small Rights**

Grand Rights

Performances of dramatico-musical works whose music is specially written for them, namely: opera, operetta, musical play, revue, pantomime.

Small Rights

Small rights are all those other rights which are not classed as Grand Rights.

***Note re Recoupment**

Recoupment = recoupment of production costs.
Royalty scales can be linked to different stages of recoupment.
For example, at 100% or 125%, 150% and 200% of recoupment of production costs.

D. COMMISSIONING FEES

D.1 COMMERCIAL MUSICALS

D.1.1. Splits

Usually split 1/3rd each composer, bookwriter, lyricist, in same ratio as share of royalty (after taking account of royalty to underlying rights owners if applicable).

If bookwriter/lyricist same person, on occasion could be 50/50 split of commission fee between words/music, depending on the circumstances.

If composer/lyricist same person, probable split of fee would be 2/3rds to composer/lyricist : 1/3rd to bookwriter

Royalties should generally be 1/3rd each for each component, even if bookwriter/lyricist or composer/lyricist are the same person.

D.1.2. Payment structure

Payment instalments (in percentages to be agreed of the total amount) geared to :

- signature (aim for 50%)
- delivery
- preliminary workshops
- acceptance (if applicable) or delivery of final draft as per contract.

All payments prior to acceptance or final delivery should be fee, not on account of royalty.

Ideally build in flexibility to instalments, and how much is on account, as process may take longer than anticipated, or involve new people coming in.

D.1.3. Size of Fees

Commercial musicals

Guideline

Fee only :

£10,000 + £10,000 + £10,000 as fee for each of composer, bookwriter and lyricist (or each of music, book, lyrics if more people involved).

plus

Advance on account of royalty

£10,000+£10,000+£10,000 on account for each element.

plus

Workshop(s) may be paid for as separate figure(s).

D.2 SUBSIDISED MUSICALS - FEES / ROYALTIES

Fees mentioned below are for the combined total of all 3 elements of book, music and lyrics.

D.2.1 TNC

(Straight play currently £8,269.)

Aim for total £12,000 of which 50% fee + 50% on account (unless in smaller Category B venues, in which case 100% fee).

D.2.2 TMA

(Top TMA rate for a straight play currently £7,261.)

Aim for total £10,000, similarly at least 50% fee, or more fee depending on category and pro rata to weighting of fee/advance for straight play.

D.2.3 ITC

(Straight play currently £6,153.)

Aim for total £8,000 - all fee, in line with all fee for straight play under the ITC Agreement.

D.2.4 ROYALTIES

In all cases likely that royalties would be on standard scale relevant to each agreement.

E. BILLING

Points to note

E.1 Determine billing between Writers and Producer (negotiable).

E.2 Comparative billing between creative Writers.
(size, wording, where etc)

Guideline:

Size - Norm is same size for each contributor.

Order -

Book, Music, Lyrics
(where 3 are different people)

or

Book+Lyrics, Music
(where bookwriter and lyricist same person)

or

Book, Music + Lyrics
(where composer and lyricist same person)

But always negotiable and may depend on comparative clout and fame of contributors.

E.3 Billing in relation to underlying rights (if any).

E.4 Billing for foreign language productions. (Size of translators' names should not be more than 50% in relation to bookwriter, lyricist.)

F. APPROVALS

- F.1 Writers (all of them) should have approval of :
- director
 - choreographer
 - designers (set, costume, lighting, sound)
 - principal cast
 - third party producer
(= producer or co-producer sublicensed by principal producer)
- F.2 Composer should additionally have approval of :
- musical arranger(s) (including dance + vocal if applicable)
 - orchestrator
 - musical director

G. LATER COLLABORATORS

It is not uncommon for later collaborators to be involved, in any of book, music and lyrics.

All agreements should provide for default level for original collaborators, who should be entitled to a minimum tranche of royalty, and possibly a credit where applicable.

H. MERGED COPYRIGHT

There are benefits and pitfalls in entering into a merged copyright for a musical property (= where the creators assign their rights to an entity which owns the copyright, and the creators will own proportionate shares of the merged copyright, the other copyright owners of which may also include the producer and/or underlying rights).

Professional advice is a prerequisite before any commitment is made to a merger arrangement.

I. NEW TECHNOLOGY

As everyone is aware, new technology is transforming the ways in which musical works are distributed, exploited, monitored and regulated (or not). It is important to provide in agreements for exploitation by new technology which is not yet known but may hereafter be invented, and to cover any such unknown future uses by an agreed split of the income from such future sources.

J **MISCELLANEOUS**

Useful additional points to consider are:

J.1 **Cast Albums**

Usual split would be Producer 40% / Writers 60% with proceeds shared in perpetuity.

J.2 **Musical Scores**

The Producer provides all necessary orchestral scores, conductor's scores, orchestra parts and vocal parts at his expense, and owns the physical scores.

Copyright in the scores should remain with the Composer and Lyricist respectively.

APPENDICES

- (a) **1 Model Collaboration Agreement for the Writers**
 2 Notes on Model Collaboration Agreement

- (b) **Collaboration Agreements**
 (Explanatory notes from Mercury Musical Developments website)

- (c) **Checklist for agreements**
