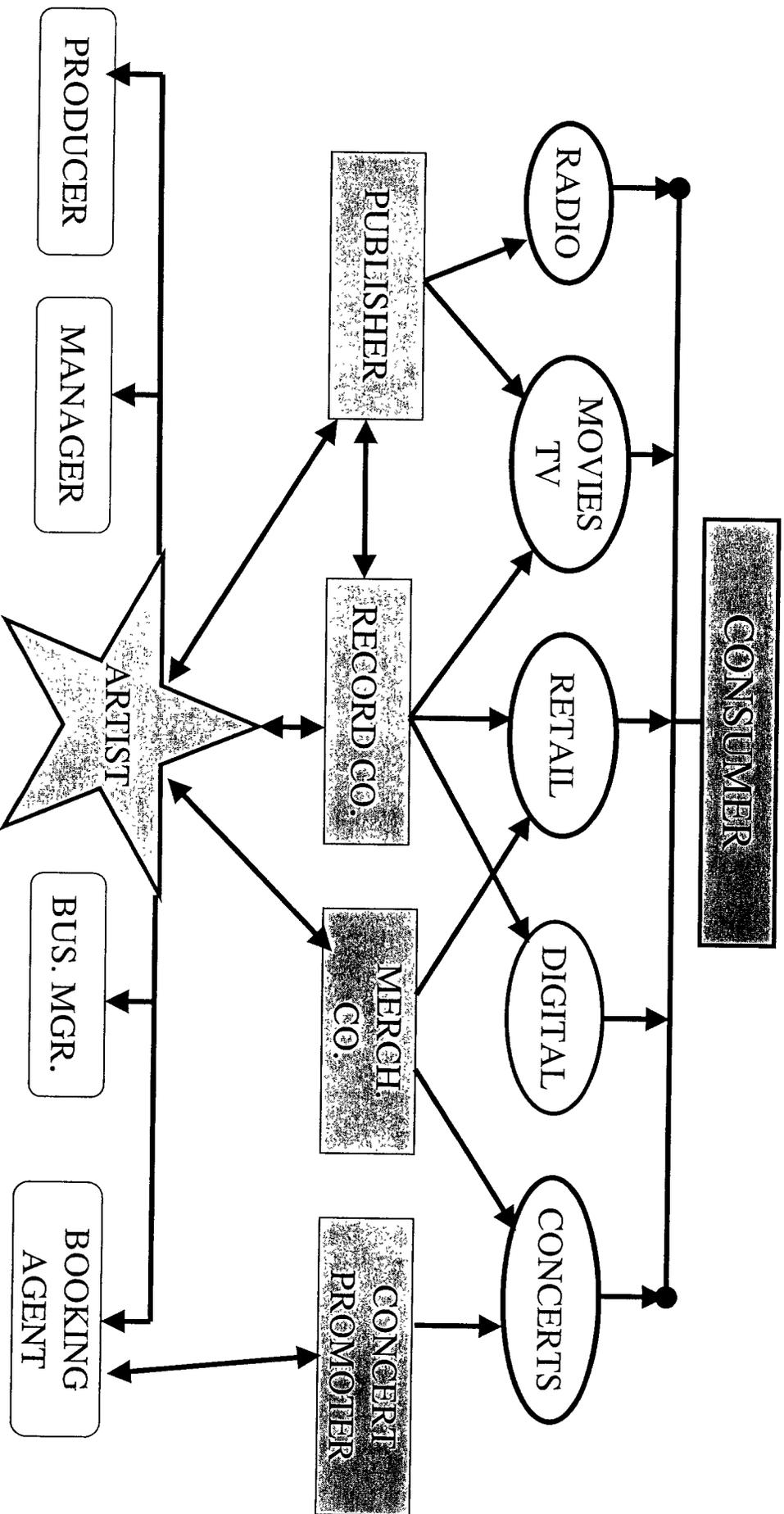


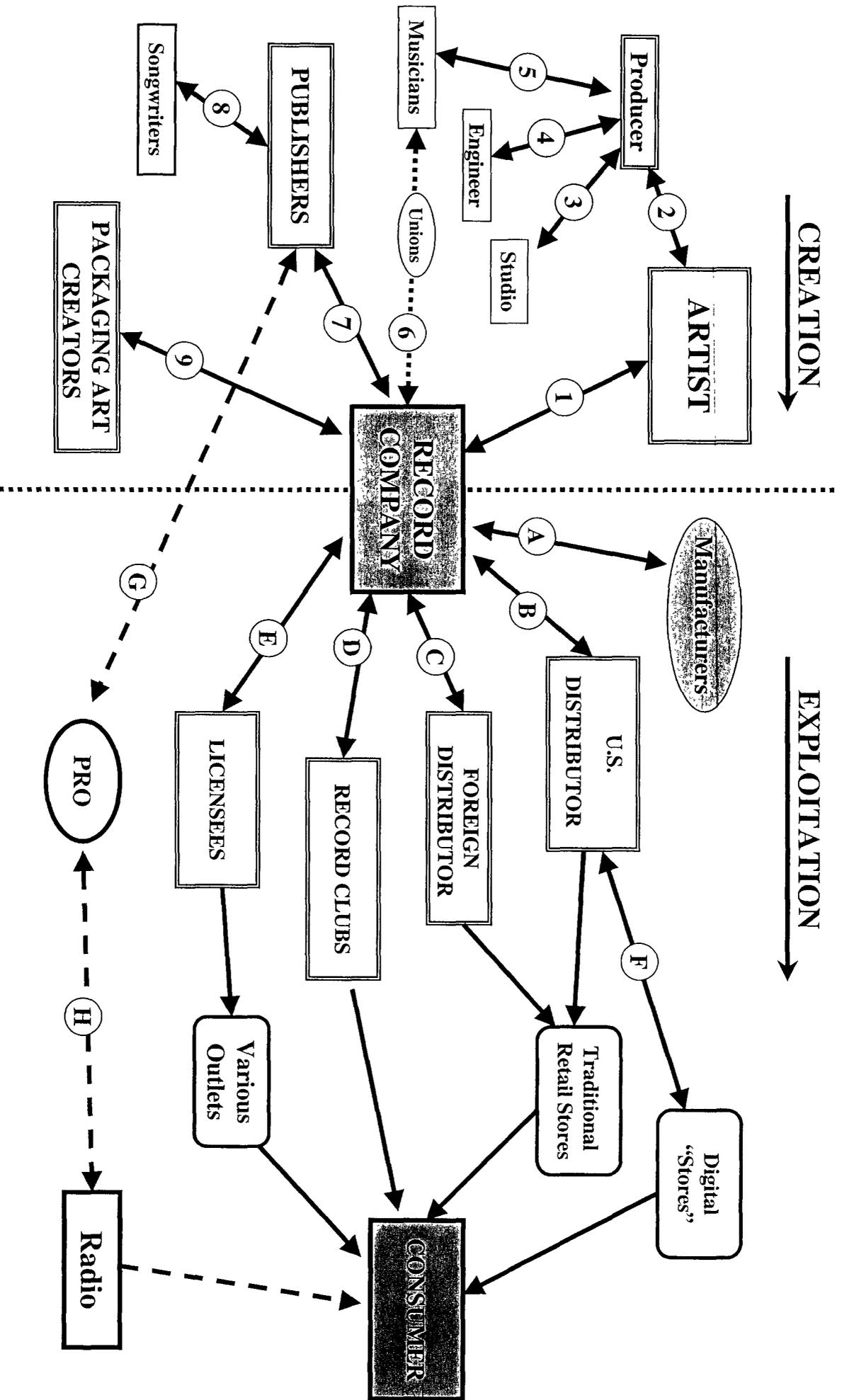
MUSIC INDUSTRY CONTRACTS

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MUSIC INDUSTRY OVERVIEW





RECORD INDUSTRY CONTRACTS

I. Creation of the product.

1. Record company –w- Artist. Record companies typically contract with artists on an exclusive basis, for a term determined by the number of albums to be delivered, those following the first usually being optional with the record company. Record companies fund all costs incurred in connection with the recording, marketing, manufacturing and selling of records and own all rights in them. Artists receive a royalty based on either the wholesale or retail price of each record sold (after various deductions) as well as an advance against those royalties for each album recorded. All recording costs and a portion of certain marketing costs are deemed advances to artists, recoupable from the royalties otherwise payable to them.

2. Artist –w- Producer. Record contracts typically obligate the Artist to hire (and pay) the record producer, to whom the Artist delegates the obligation to produce and deliver the album to the record company. Artists pay Producers an advance and a portion of their royalties for the album in question. No producer royalties are payable typically unless and until the record company recoups the recording costs from the artist's royalty. Once that event occurs, however, the Producer (unlike the Artist) is paid retroactively to the first record sold, without regard to the other costs customarily recoupable from the Artist's royalties.

3, 4, 5 & 6. Producer –w- Studio, Engineer and Musicians. It is the Producer's responsibility to rent the studio where the recording sessions will be held and to hire the engineer to assist in the technical aspects of the recording process. The Producer contracts with the session musicians and vocalists through the AF of M and AFTRA, respectively, each of which has a collective bargaining agreement with each of the major record labels specifying the compensation to be paid.

7. Record company –w- Publisher. In order to record a song the record company must secure the permission of its owner, the music publisher, in the form of a mechanical license. Although the royalty for the first recorded use of a song is theoretically subject to negotiation, by practice the parties adopt the rate set by law for subsequent uses (currently \$.085 for a typical song). The rate is subject to increase every 2 years. If the songwriter is also the artist, the record company, through the "controlled composition clause" of the recording contract, will attempt to reduce the mechanical royalty payment in various ways.

8. Publisher –w- Songwriter. Publishers acquire songs through contractual relationships with songwriters: either "one-off" contracts by which they acquire one or more existing songs or exclusive relationships by which the publisher acquires all songs written during the term of the contract. In the simplest form of the relationship the publisher owns 100% of the song copyright and is obliged only to pay the songwriter the "writer's share" of royalties, i.e. 50% of the Publisher's U.S. net receipts from all sources (except performing rights organizations which account separately to writers and publishers for their respective shares of performance income). However, highly successful writers may be able to command

“copublishing” deals in which they retain some portion of actual copyright ownership. In that event the songwriter will also receive a corresponding share of the “publisher’s share” of income. If the relationship is exclusive it’s common for the writer to receive a periodic advance (a “draw”) which is recoupable from the “writer’s share” of royalties. Advances payable to songwriters who are also artists may be based on the number of the songwriter’s songs contained on his/her own album.

9. **Record Company –w- Packaging Art Creators.** Various persons and entities will make contributions to the artwork which is reproduced on the packaging of the record, most notably the photographer (if the artist’s photograph is being utilized), the designer who conceives the overall package and the graphic artists who supply the remaining elements. The use of independent contractors requires the company to secure copyright rights in these creations by written contract, which customarily provides for payment of a flat fee to the creator in consideration of the transfer of all or some specified set of rights. (Note that the recent, ongoing consolidation of the record industry and its attendant workforce reduction has resulted in more and more of these functions being outsourced. Record companies – faced with slugging CD sales - are also beginning to recognize this valuable source of income and many are attempting to secure some merchandising rights in it via the artist contract.)

II. Exploitation of the product.

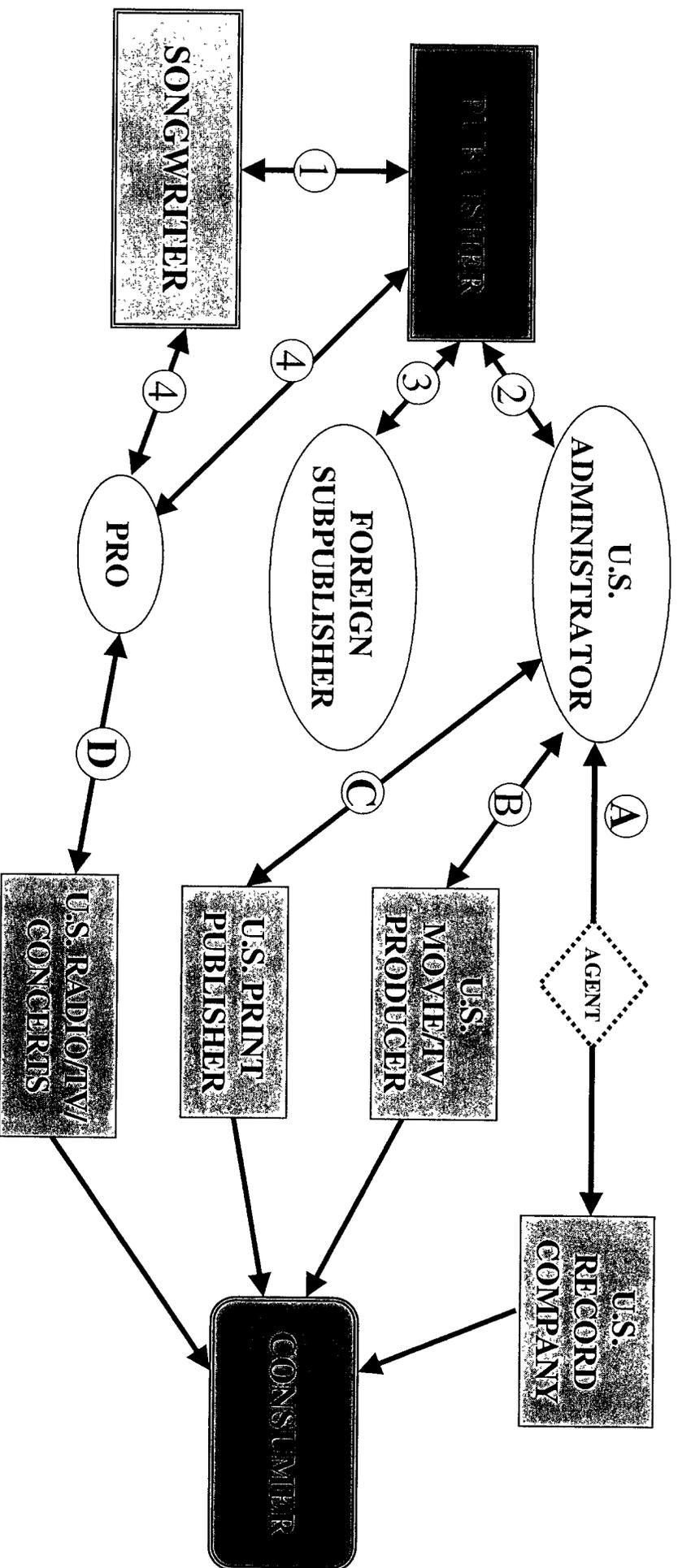
A. Record Company –w- Manufacturers. Record companies contract with manufacturers to manufacture albums (in whatever format) from the record master and artwork produced by the record company. In order to secure the lowest pricing record companies frequently enter into long-term contracts with the manufacturer. Finished records can cost anywhere from \$.50 to \$2.00 depending on how elaborate they are.

B. and F. Record Company –w- U.S. Distributor. In order to get their records into “brick-and-mortar” retail accounts record companies must use the services of a record distributor. Each of the “major” record companies owns its own distributor, but independent companies must contract with third parties. Distributors warehouse the product, solicit orders from retail accounts, arrange for advertising, deliver marketing materials, ship the product and then invoice and collect payment for the order. Records are sold with the right for the retail store to return them to the distributor for credit if they don’t sell. Distributors may advance monies to the record company as an inducement to enter the relationships. They may also handle the manufacturing of the records and sometimes finance the manufacturing costs. (A security interest would be granted in the inventory in that case to secure repayment of manufacturing costs). Their fee for these distribution services typically ranges between 14% and 25% of the wholesale receipts from the records sold.

A new distribution model has been developing in the record industry over the past few years, beginning with the revolutionary (but illegal) entry of Napster into the marketplace - which allows consumers to share digital files of music via peer-to-peer networks - and the advent of CD burners which allows the file to then be reproduced on a CD by the consumer. There are now a number of legitimate digital retail outlets – most notably Apple’s I-Tunes –, which are delivering legitimate, downloads of music for the basic price of \$.99 per unit. Brick-and-mortar distributors are now struggling with their role in these new delivery systems.

- C. Record Company –w- Foreign Distributor.** In order to place their records for sale in territories outside the U.S. record companies license to foreign distributors for a term of years the right to manufacture and distribute their records in the territory in question. The royalty is based on the selling price of the record in question.
- D. Record Company –w- Record Club.** There are two major record clubs – Columbia House and BMG – which license from record companies the right to distribute records direct to consumers who choose to join the club. They pay a very modest royalty per record sold which are shared with the artists, but have historically paid large advances to the larger record labels which, by virtue of the wording of the artist contracts, are not shared with the artists unless and until the advances are actually earned.
- E. Record Company – w – Licensees.** There are many non-phonograph uses of record masters from which record companies can derive income: movies, TV, commercials, video games, etc. Each use involves a license agreement and the fees paid can vary wildly based on the nature of the use – from gratis uses on TV shows to help promote a new artist to millions of dollars to use a well-known song in a new-car ad campaign.
- G. and H. Radio.** Ironically, record companies derive no income, and have no contractual relationship with, the radio stations which play their records for the simple reason that per the copyright act the performance of a record does not require its owner’s permission. The performance of the song embodied in the record, however, is protected by copyright. Therefore, in order to play a record, a radio station needn’t secure permission from the record company, which owns it, but it must secure the permission of the music publisher whose song is being performed on the record. The latter permission is reflected in a blanket license agreement between the station and one of three performing rights organizations – ASCAP, BMI and SESAC – with which the publisher will have contracted to act as its representative in this regard.

MUSIC PUBLISHING



MUSIC PUBLISHING CONTRACTS

I. Acquiring songs // music publishing infrastructure.

1. **Songwriting agreement.** Publishers acquire songs through contractual relationships with songwriters: either “one-off” contracts by which they acquire one or more existing songs or exclusive relationships by which the publisher acquires all songs written during the term of the contract. In the simplest form of the relationship the publisher owns 100% of the song copyright and is obliged only to pay the songwriter the “writer’s share” of royalties, i.e. 50% of the Publisher’s U.S. net receipts from all sources (except performing rights organizations which account separately to writers and publishers for their respective shares of performance income). However, highly successful writers may be able to command “copublishing” deals in which they retain some portion of actual copyright ownership. In that event the songwriter will also receive a corresponding share of the “publisher’s share” of income. If the relationship is exclusive it’s common for the writer to receive a periodic advance (a “draw”) which is recoupable from the “writer’s share” of royalties. Advances payable to songwriters who are also artists may be based on the number of the songwriter’s songs contained on his/her own album.

2. **Administration agreement.** Someone must handle the “administration” in the United States of the copyrights owned by the publisher—registering them, issuing licenses, collecting royalties, etc. This can be done in-house by the publisher’s own employees or outsourced to another publisher or an administration company. If the latter, the publisher will pay a fee for these services ranging anywhere from 10 to 15% of its gross receipts and will typically commit to some term of years.

3. **Foreign subpublishing agreement.** Likewise, the publisher must administer its rights in foreign territories. Major publishers accomplish this through offices owned by them in the various territories of the world. Smaller publishers must contract with foreign administrators who render these services for a commission ranging from 15 to 40% of receipts, depending on the source of the income and the bargaining position of the U.S. publisher. Subpublishers will insist on a term of 3 to 5 years, but will frequently pay an advance to the publisher depending on the size of the anticipated revenue stream. Deals can be struck territory-by-territory with individual companies or a single deal with a single subpublisher which administers all foreign territories.

4. **Performing rights organizations.** The right to perform a song publicly – by radio broadcast, in a concert venue, on a TV program, in a restaurant or any other public place– is secured to the publisher by the Copyright Act. Given the impossibility of every publisher licensing every song to every entity performing them, the licensing of these rights (except for performances of songs in U.S. motion picture theatres) is delegated to one of the three performing rights organizations: ASCAP, BMI and SESAC. Both the publisher and the songwriter will contract with one of them (as they may choose) via an affiliation agreement.

II. Exploiting songs.

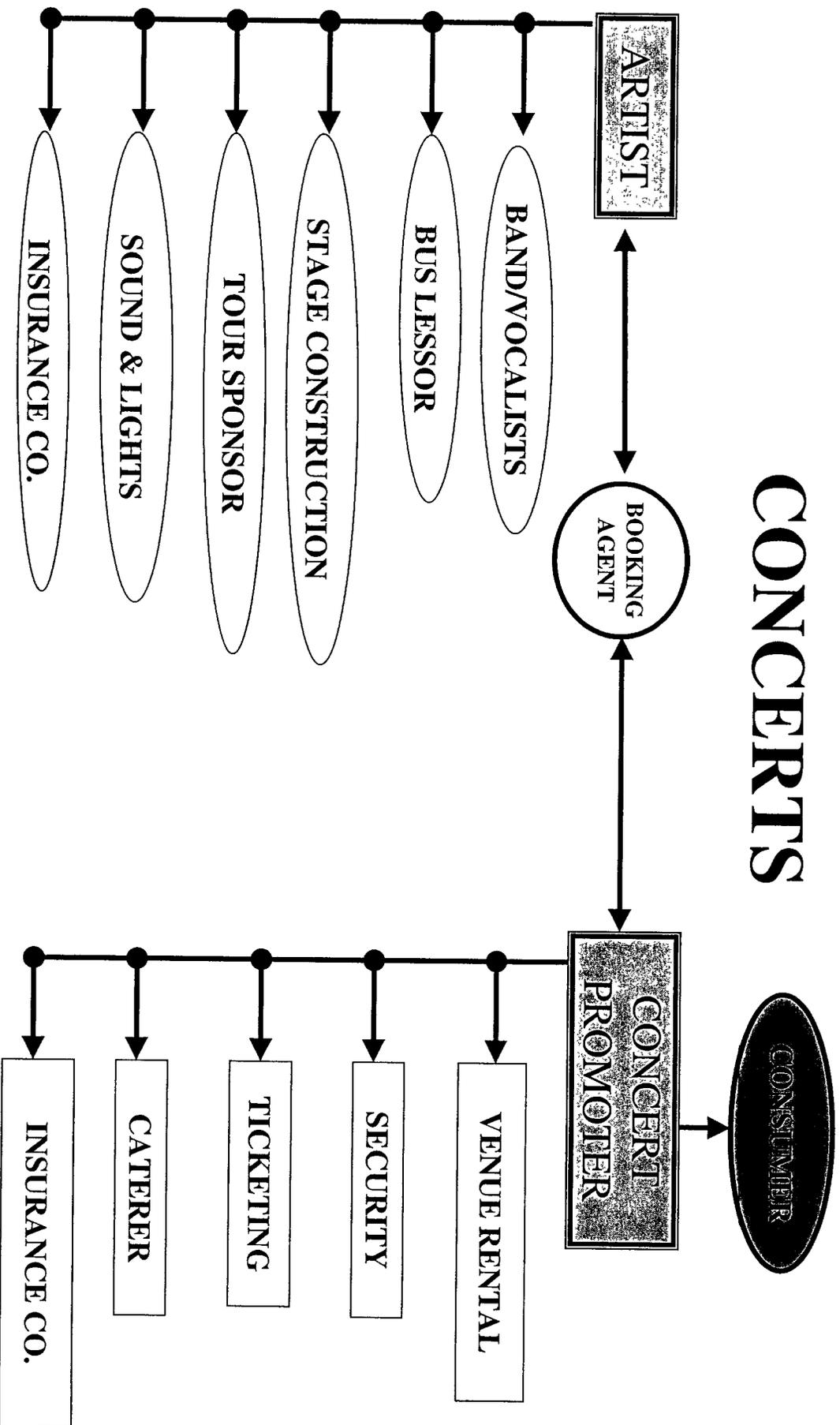
A. **Mechanical licenses.** Record companies acquire from publishers the right to record their songs by the issuance to them of mechanical licenses (a term that originated in the player piano days). The right is virtually always non-exclusive and is set at the maximum rate specified for this use in the Copyright Act (the “statutory rate”) for all recorded uses of a song following the first. The current statutory rate is \$.085. In the U.S. major publishers typically delegate to an agent known as The Harry Fox Agency the job of issuing these licenses and collecting the royalty.

B. **Synchronization licenses.** The use of a song in any audio-visual work is known as a synchronization license. Unlike the mechanical license there are no statutory provisions bearing on the license fees to be negotiated, and they can vary wildly based on the nature of the use and the budget of the movie, TV program, commercial, video game, etc.

C. **Print licenses.** The publication of printed music today is concentrated in the hands of a very few print houses – most notably Warner Bros. Print Publications, Hal Leonard and Music Sales. Publishers can license popular songs to print houses individually or they can do exclusive deals with them for their entire catalogues. The print house pays a royalty based on the selling price of the printed editions in question, and in the case of an exclusive relationship may pay an advance as well.

D. **Performance licenses.** Performing rights organizations (discussed above) grant blanket licenses to users to perform their entire repertoire in consideration of the payment of an annual, negotiated flat fee that varies based on the size and nature of the user. The PRO then distributes the monies collected (less overhead) to its publisher and writer affiliates on the basis of the ratio that their statistical estimate of the number of performances of that publisher/writer’s songs bears to the number of performances of all songs in the PRO’s repertoire.

CONCERTS



MERCHANDISE

