

Role Call: You Are Bartholomew Cubbins

In the old-school music business model, you, the songwriter or artist would be under contract to a large record company and publisher, who would then call all the shots. In today's world of Independent artists, YOU are the one who puts others under contract to you. The key is to know

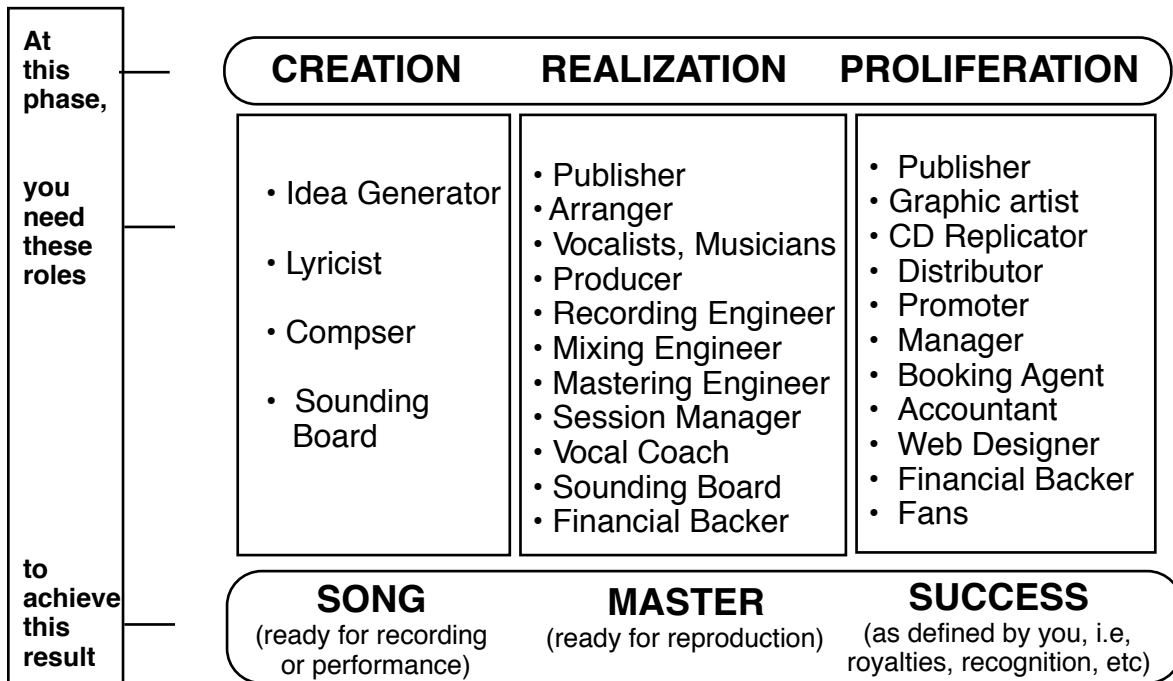
- There are three parts in the journey from creative inspiration to released recording. These are:

- **Creation** - the process of conceptualizing, creating and crafting the song, including getting critique and making revisions.

- **Realization** – the process of taking the finished song from paper (or in your head) to master recording
- **Proliferation** – the process of getting copies of the song as widely disseminated to as many people as possible through a recording or live performance

Within these three phases, a number of different things must happen, each requiring different types of skill sets. Each related group of tasks that must be done comprises a *role*. In big label, big budget projects, each role may have a dedicated person (or more than one person) doing those tasks. For the typical Indie artist, all the roles are filled initially by you. These are the many hats you have to wear. The reason it often seems so daunting is that the knowledge and skills you have will fit some of the roles, but not others, and when you come to a point where those roles need to be filled by skills you don't possess, you feel adrift.

If you know what each role is, when it is needed, and the skills required, you will be in an EWO state, and you will be able to continue to move ahead with much less stress. First, let's take a look at some of the key roles required to get a song from beginning to end.



Actual songwriting occurs in the Creation phase. Realization involves arranging, recording, and production, while Proliferation centers around distribution and promotion. Each of the roles above is a combination of creative elements and technical elements, but the skill sets and objectives for Realization and Proliferation are different than those for the initial creation of the song.

Let's be very clear on what a "song" actually is. Legally and traditionally, a song is a melody and a lyric. That is essentially what is protected by a song copyright registration. A title, a concept or an arrangement cannot be registered as a song. A given lyric and melody can be set to different arrangements and can be registered as new entities, but those are derivative works* from the original song, i.e. the words and melody. Typically, the initial version of a song has chords to go with it, but keep in mind that chords are not required, and that the same words and melody can be set to different chord arrangements. A jazz instrumental arrangement, choral arrangement, big band arrangement and folk guitar arrangement of the same words and melody are quite likely to have different underlying chords, rhythmic patterns, song structure and perhaps an

occasional word change. These are elements of arrangement, and are separate copyrightable entities as derivative works* of the original melody and lyric.

- **Derivative work, as described in the U.S. Copyright Office Circular 14:** *A work that is based on (or derived from) one or more already existing works, is copyrightable if it includes what the copyright law calls an “original work of authorship.” Derivative works, also known as “new versions,” include such works as translations, **musical arrangements**, dramatizations, fictionalizations, art reproductions, and condensations. Any work in which the editorial revisions, annotations, elaborations, or other modifications represent, as a whole, an original work of authorship is a derivative work or new version. ... To be copyrightable, a derivative work must be different enough from the original to be regarded as a “new work” or must contain a substantial amount of new material. Making minor changes or additions of little substance to a preexisting work will not qualify the work as a new version for copyright purposes. The new material must be original and copyrightable in itself. Titles, short phrases, and format, for example, are not copyrightable*

Thus for purposes of this discussion and the Creation-Realization-Proliferation paradigm, Creation will focus on the initial writing of a melody and lyric, along with (optionally) the initial accompanying chords. Anything beyond that (for example when the rest of the band or the producer starts adding parts) becomes elements of Realization, i.e. deciding stylistic elements of how the song will be arranged and produced. As songwriters, we want to be able to create a lyric and melody which, if sung *a capella* or in *any* stylistic arrangement, will always stand on its own as a well-crafted song. That is how a song gets covered by many artists across several different styles. . (For an excellent discussion and unique historical perspective on the essence of a song see the essay “*The Myth of the Song Poet*”, by folk legend Jack Hardy at www.jackhardy.com.)

As a totally self-contained Indie artist, you may indeed have to wear all 500 hats, but while you are acting as a songwriter, you have to deal with only four roles: Lyricist, Composer, Idea Generator, and Sounding Board. Remember that one person can fill more than one role (e.g., you write both the music and the lyrics) or one role can be filled by more than one person (e.g., two people collaborate on a lyric).

The Lyricist role is the one which writes the lyrics. The Composer creates the melody and optionally, the initial chord accompaniment. These are well known and easily understood roles.

But where do the inspirations for songs come from? What ignites the spark to want to write *about* something ? This is the role of the Idea Generator. The one who has the “songwriter’s antennae” always extended, scanning life for moments to be captured in a sonic snapshot. Many songwriters generate their own ideas, from life experience, from an event in the news, from a line in a book or from seeing something on TV. But just as easily, it could be someone else who provides the key idea for a song. That person may not write a single lyric line or melody note, but they can provide the spark, the hook, the central premise that becomes a song.

In that case, they are acting as the Idea Generator. It is important as a songwriter to always remain open to all sources of inspiration. The person who insists on being totally self-contained may miss out on some great ideas that come from others. If someone else provides the idea for a great song, an idea is not a copyrightable entity, thus you are not *required* to credit them as a co-writer, but it may be good business and interpersonal etiquette to do so. That becomes one of your early *choices*. If there is one less co-writer, you get a larger piece of the pie. But will it cause hard feelings and possibly burn a valuable bridge? Like all choices in the arts, there is not an absolute ‘right’ or ‘wrong’ decision. Just the one that seems right for you, and you can only make it if you stop to think about it.

The fourth role in the realm of Creation is that of Sounding Board. This is one role which is usually impossible to fill yourself, and it is an extremely important part of Creation. Sadly, many writers are afraid of this role and leave it out of the process, to their own detriment.

The Sounding Board is the person (or persons) whom you let hear your early versions of the song, or see the initial drafts of the lyric, to get feedback and constructive critique. The skills required in order for this role to be valuable to you are that the person(s) filling it have no reason to say they like or dislike your song for any reason other than its own merits. This means that your spouse, your mom, your dog, or your employee will not effectively fill this role (unless they are also a qualified music evaluator whom you know can be objective). A music professional, a knowledgeable teacher, a qualified songwriting coach, or a Songwriter Association provide good sources of constructive feedback.

Think of Olympic athletes – how would they ever reach their full potential if they didn't have a qualified, objective person observing them and telling them what was good and what could be improved. If all they ever got was a supportive parent or partner saying "good job!" and "great effort" to everything, without someone pointing out areas for improvement, there would be no limited advancement of skills and no intensifying of inner drive. However, there would be that warm fuzzy feeling of affirmation, which everyone likes.

On the other hand, if all one ever heard is relentless criticism, which unfortunately can also come from parents and loved ones, there is no better way to kill motivation and creative spark. And in both cases, eyes would certainly *not* be wide open to what could really be achieved. Only you can determine where the right balance lies for you.

Many songwriters tend to avoid objective critique, but it is one of the surest, fastest ways to advance your skills. For more on this, see the article "*Taking the Mystique Out of Critique*" by Bill Pere at www.billpere.com/Songwriter_Tools.htm

In my years of song critiquing, I've seen so many writers bring fully produced studio recordings, representing significant time and money, to critique sessions. This is clearly outside the Creation-Realization-Proliferation paradigm,

as a fully produced song is ready for Proliferation, while the Sounding Board role as it relates to critiquing the song (as opposed to the production), is part of the Creation phase. When good suggestions are made that would really improve the song, the writers are faced with unpleasant choices: go back to the studio and spend more time and money to make the improvements, or live with a song they know could be made better. (NOTE: . *The Sounding Board role in the Realization phase relates to input on arrangement and production. In the Proliferation phase, the Sounding Board offers input on marketing strategies*).

The simple way to avoid this rock-and-hard-place situation is to get your constructive feedback early in the process, before anything is fully committed to a final form. Then, adjustments are easy to make and don't cost anything. Rewriting and revising is an integral part of songcrafting, thus its value lies in the Creation phase. In your songwriting process you now have two more choices:

- (a) to seek out or to avoid critique, and
- (b) (assuming you do get input), to accept or reject the feedback you receive.

You are *always* in control of your artistic choices, even when the options come from a source external to you. It is not easy to offer up your creation for strangers to pick at, but to avoid critique is to deny yourself the opportunity to make choices, and if your head is in the sand, you cannot have your Eyes Wide Open.

Once you move beyond the Creation phase, there are many new hats to wear, each with a different set of skills. Your choice is always

- (a) Do I do fill the role myself, and
- (b) If not, how do I decide who to get to fill it ? .

(For more on this specific question, see the discussion of communication preferences and MBTI in Chapter 6, and the related articles at www.billpere.com/Songwriter_Tools.htm)

Don't Let Misunderstood Roles Roll Over You.

Let's look briefly at the roles in the Realization and Proliferation phases so you will be clear as to how the non-songwriting hats relate to the overall process. If you have written your song and are going to record it yourself in a home studio, you are acting as the producer and session manager. When you add new parts, you are acting as the arranger. If you run your own equipment, you are acting as the engineer(s). And most likely, you are the financier. Make sure you're clear that when you're wearing one of those hats, you are *not* acting as a songwriter.

Songwriters often lament that having to spend so much time with the technical and business stuff takes away from their time to write and create. Of course it does. You only have one head (at least most of us do...) and thus can only wear one hat at a time. Your *choices* in this situation, for each role are:

- (a) Can I fill this role well enough to do the job or could someone else do it better?
- (b) Is it worth paying someone else so that I don't have to wear this hat at all and I get more time to be creative?
- (c) Can I afford to pay someone else to do it ?
- (d) Can I find someone I trust to do the job to my standards ?

In a big-label, big-budget recording project, there is going to be a separate person (or persons) for each role in the Realization process. In typical small Indie studios, one or two people may act as producer, arranger, session player, and all three engineers (recording, mixing, mastering). You'll want to find out which skill sets are this person's (or persons') strongest and weakest. It is not unusual for a song to be recorded in one studio, but mixed and mastered elsewhere, due to the different skill sets involved.

To demonstrate the importance of understanding the different roles and their relationship to the songwriting process, let's focus for a moment on the producer, one of the least understood roles. In the strict sense, the producer is the one who gathers and coordinates the resources necessary to execute the project, which in this case is usually a recording. In many cases, the producer also acts as the arranger, deciding what parts get added, then actually creating those parts (an arranging task) and adding them (the roles of session player and engineer).

One tale of woe I hear all too frequently is the saga of how the producer, having added many parts and having helped shape the song, now wants credit as a co-writer i.e., some percentage of the copyright ownership. It sometimes gets to the point where the songwriter withholds payment and the producer refuses to give the writer the masters. This happens because of misunderstandings about roles, and it is easily avoidable.

This type of dispute usually revolves around two things – credit, and money. First, be clear that a producer/arranger may in fact contribute creative input which shapes the final recording. *However*, that is not part of the *songwriting*. Give credit where it is due i.e., as an arranger and producer, but not as a songwriter unless the producer has *materially* helped re-write melody and/or lyrics, in which case they are in fact a co-writer. *However*, that still does not mean you are *required* to credit them as a writer, depending on how your initial working agreement was structured. If you hired the producer under a fee-for-service arrangement, the work-for-hire rules probably apply, whereby when one agrees to provide services for a fee, the product of those services is owned entirely by the one who did the hiring. Unfortunately, this is often not discussed up front between the songwriter and the producer, leading to all kinds of subsequent disputes.

Further complicating this type of situation is the fact that the producer is likely wanting co-writing credit not so much because they want the recognition, but because they want a piece of the back-end monetary pie (i.e. subsequent

royalties from the song). If a producer/arranger said to you that they did not need to be credited as a writer, but they wanted a certain percentage of future royalties (usually called “points”), that is a much more accurate and reasonable request. And of course there is another “*however*” -- depending on the specifics of your working agreement (and most working agreements, if they exist at all, are sorely lacking in specifics) you may still not be required to give the producer points, but you may *choose* to, considering the following :

- (a) How much did they contribute ?
- (b) What exactly was agreed to up front ?
- (c) Do you want to maintain this professional and personal relationship or burn the bridge ?
- (d) Is it worth the aggravation to fight over ?
- (e) How much are the points worth to you versus the relationship?
- (f) If the producer were credited as a co-writer, would it motivate them to help promote the song ?
- (g) Do they have valuable contacts they might pitch it to ?
- (h) How likely is it that this song will even earn any future royalties?
If so, how much ?
- (i) How do you balance principle and practicality?

There is no single right or wrong answer, only what fits your specific situation. Note that in the absence of some specific agreement about points, you are not required to give them nor should your master ever be withheld from you if you have paid for the services rendered. If you are the financier i.e. the one paying the bills, then you are in control, however, you need to know your choices and the their potential results.

Some simple guidelines for avoiding this common situation are as follows:

- Discuss *up front* the details of your working relationship. In the Indie world, assume that the person you are negotiating with does not have the same detailed understanding of roles that you do (unless they have also read this book).
- Negotiate your front-end price and specify what it does or does not cover.

- State specifically that the person's services are being retained on a work-for-hire basis, and all creative input is to be owned solely and wholly by you. Most small studio, Indie producers should agree to this with no problem. If they do not, be prepared to negotiate further or look elsewhere. If they insist on a piece of future royalties, will they reduce their up-front price? (Conversely, you can *choose* to offer a piece of the back-end in exchange for a price reduction on the front-end).
- If you agree to give something for their creative input on arrangement/production make sure it's as a percentage of the back-end as production points, not as a co-writer.
- Specify what happens if they make material contributions to the melody or lyrics. Is that still going to be covered under the work-for-hire or will it merit co-writer credit? If it's spelled out up front, there should be no disputes later on.
- Spell out what exactly you will walk away with in your hands when your project is done. (i.e. not just a mixed master recording, but all your individual tracks on a hard drive in a specified format, and all your midi files and studio notes)
- Specify when and how payments will be made.

Keep in mind that most small studio producer/arrangers want to be paid up front and will not make an issue of back-end payments if you specify your terms at the outset. The agreement should be a written legal document, but you do not need an attorney for these kinds of agreements; just a clear knowledge of the roles and tasks involved, who's responsible for what, the key "what if" scenarios, and plain language to spell it out. If you're not sure about how to write it down, you can certainly consult an attorney, but that can be costly. It's another *choice* you'll have to make.

This highlights an important point for being an Eyes-Wide-Open artist: If you're faced with a choice and you don't like any of the options, always ask if there is another alternative – creative people can usually find another route. Given the choice between writing an agreement with no attorney or paying the cost to hire a lawyer, you may not like either option. As an alternative there are

some excellent music business books which provide agreement forms and templates for you to use. *"Music Law: How to Run Your Band's Business"*, by Rich Stim, from Nolo Press, is a good example. You'll find a way if you keep your eyes open to the fact that it's always your choice.

To look at it another way, if you're writing a lyric and you need a rhyme with "love", you have very few options: *above, of, shove, glove, and dove*. None of these are great choices, as they've been used over and over and don't lend themselves well to an exciting line, so find an alternative. Some additional options are:

- re-work the line to get "love" out of the rhyming position
- use a different word
- keep the line as is and alter the rhyme scheme
- use a near-rhyme.

You can find a way.

The Eyes-Wide-Open principle says: If you don't like the options for a given choice, look for another way before finally deciding. If you can't find one, you'll at least sleep well knowing that you gave it your best effort.

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Bill Pere was named one of the "Top 50 Innovators, Groundbreakers and Guiding Lights of the Music Industry" by Music Connection Magazine. With more than 30 years in the music business, as a recording artist, award winning songwriter, performer, and educator Bill is well known for his superbly crafted lyrics, with lasting impact. Bill has released 16 CD's, and is President of the Connecticut Songwriters Association. Bill is an Official Connecticut State Troubadour, and is the Founder and Executive Director of the LUNCH Ensemble (www.lunchensemble.com). Twice named Connecticut Songwriter of the Year, Bill is a qualified MBTI practitioner, trained by the Association for Psychological Type. He is a member of CMEA and MENC, and as Director of the Connecticut Songwriting Academy, he helps develop young talent in songwriting, performing, and learning about the music business. Bill's song analyses and critiques are among the best in the industry. Bill has a graduate degree in Molecular Biology, an ARC Science teaching certification, and he has received two awards for Outstanding contribution to Music Education.

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