

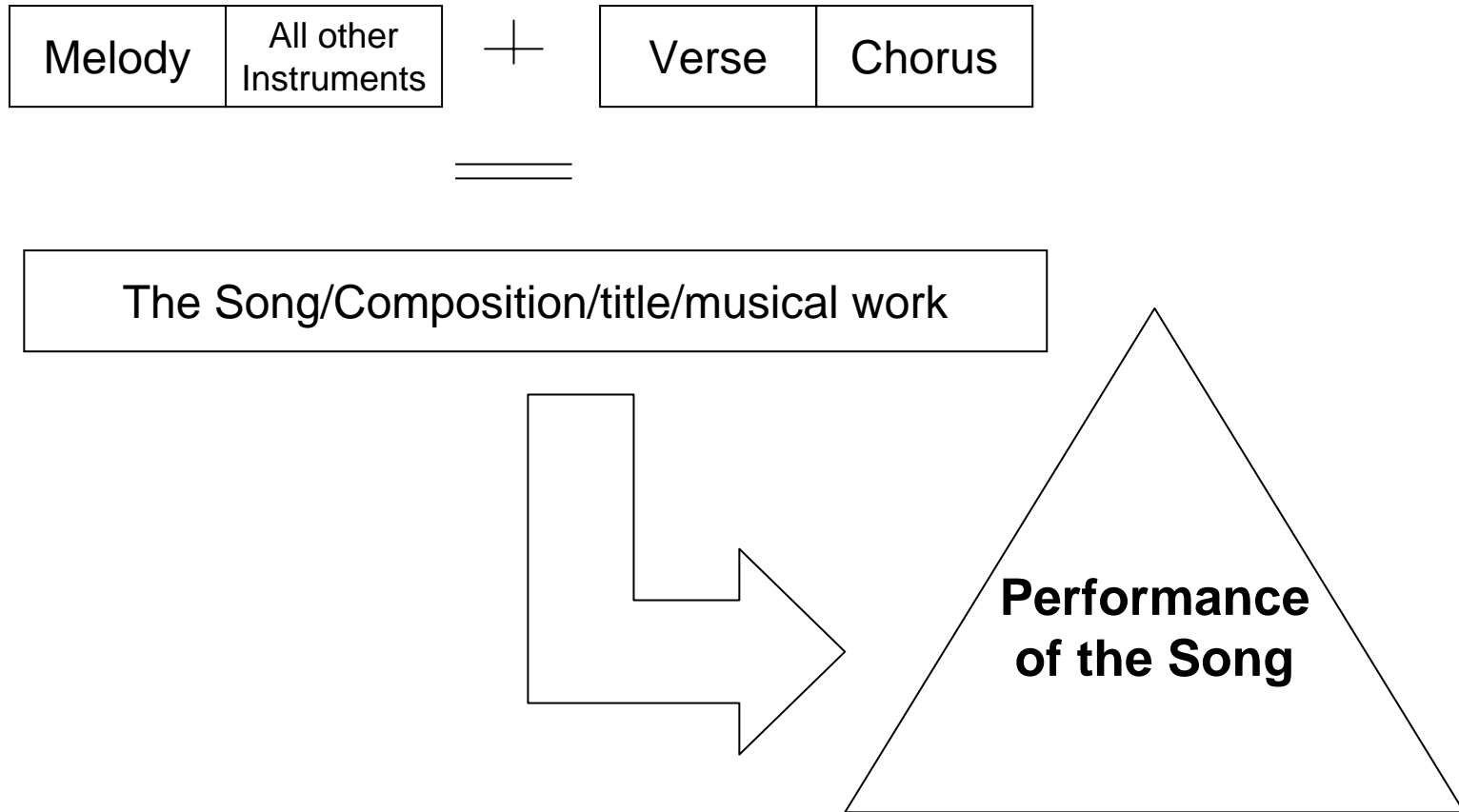
Music, Intellectual Property and Copyright in SA Today.

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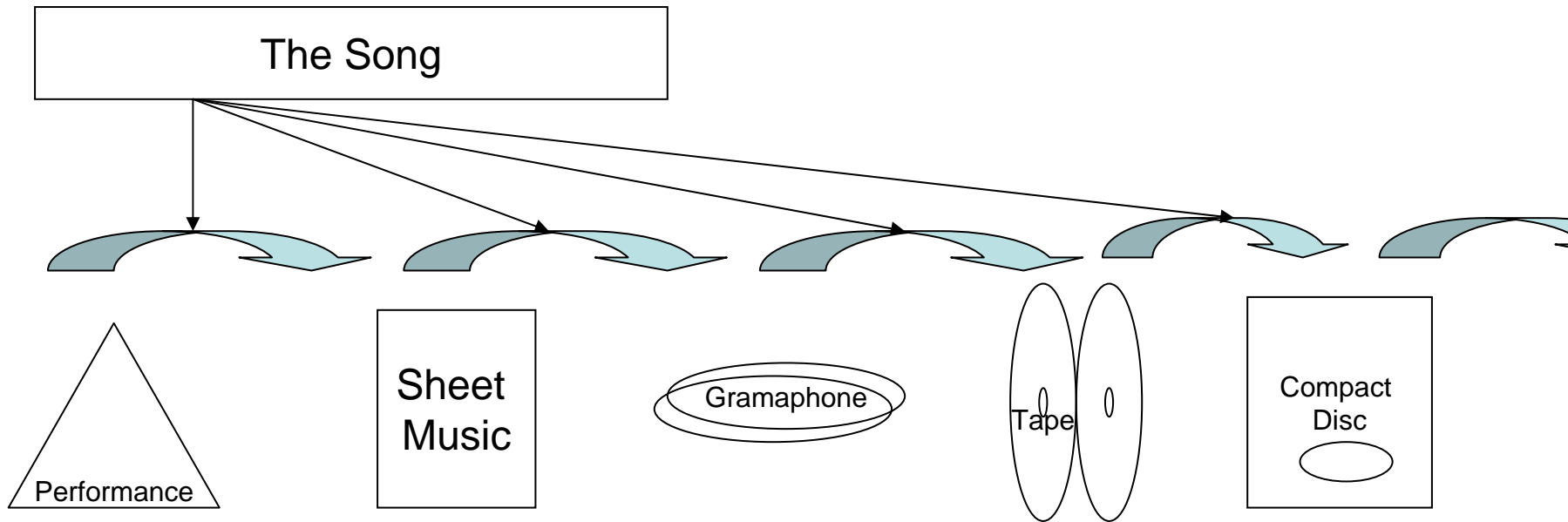
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The Ages of Music as a Business

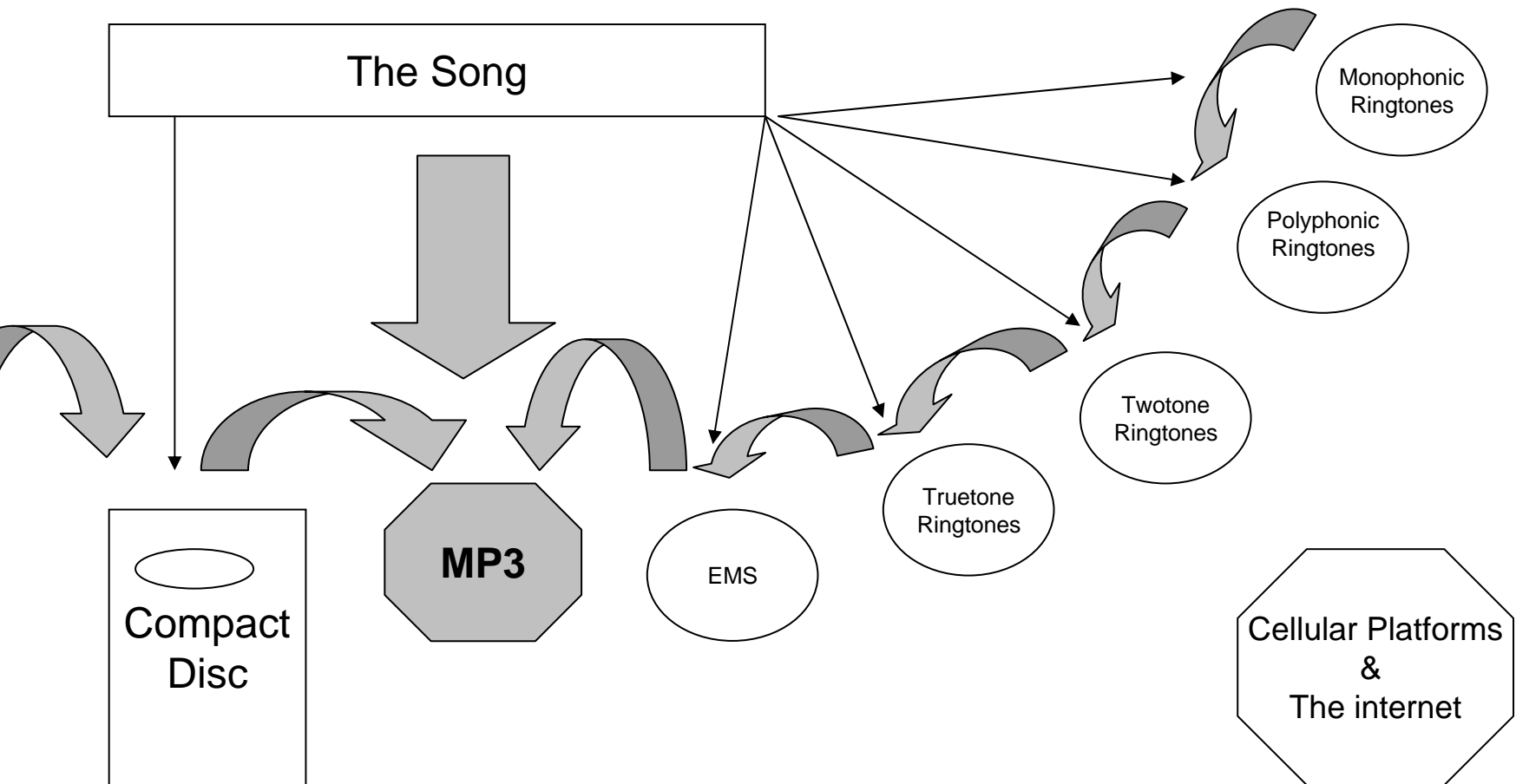
The Song and its Performance



The Ages



The New Age



Copyright...Knowledge Creation & Ownership

- Copyright is a Knowledge ownership vehicle
- Four ways to own knowledge
 - Patents, designs, trademarks& Copyright
 - Many different kind of copyrights in creative sector (cinematographic, literary etc)
- Copyright Act 98 of 1978 (as amended) governs copyright in SA, and provides legal protection to authors and their works
- Several Kinds of Copyright (especially in arts & sciences)
 - Musical work/literary/cinematographic
- Musical work Copyright...four ways to participate
 - Often referred to as “song’ copyright...or copyright in and to the song
 - Strictly speaking, an instrumental is a musical work, and song with lyrics is a mixture of a musical work and a literary work
 - Involves Author, composer, arranger & publisher
 - Ownership.....the exclusive right to do or not to do
 - Separation of authorship (creator) and ownership
 - Rights under copyright
 - Making a copy of a musical work... the output is a sound recording
 - Sound Recordings have their own separate and distinct copyright
 - Who pays...who owns
 - Artists, producers & owners of sound recordings
- Subsistence of Musical Work Copyright.... The basic rules
 - Musical work copyright not automatic
 - Originality, fixed format, citizenship/residency, publication
 - Implications for indigenous music
 - Traditional works
- Musical Work Copyright....as intellectual property
 - Personal property
 - Assets....bankable
 - Annuities.... Recurring revenue
 - Long term value....across borders & time
 - Assignment only in writing

The Copyright Act in SA

- Out-dated
- Modelled on the British Copyright Act
- Several real contradictions with respect to business practice
 - » Life of Copyright
 - » Definitions
 - » Mechanical right value
 - » Subsistence Rule Interpretation
- Rarely enforced
- Contains 'Copyright Tribunal' facility – rarely used (twice in SA history)

Who is involved in a song?

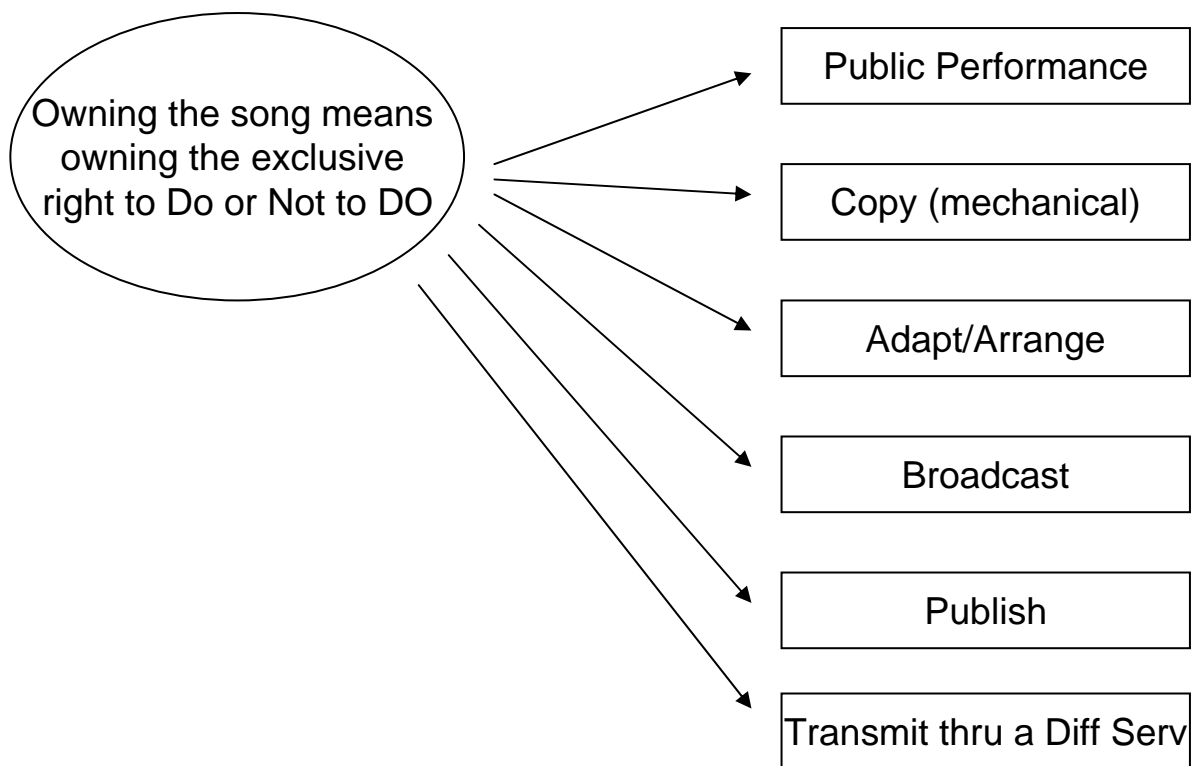
- Author
 - » Catch-all word that the SA Copyright Act uses to describe 'creators'
- Composer
 - » Widely used in the 'trade'
- Arranger
 - » Does not exist as a function with respect to original works
 - » Only exists as a function if there are already exists (published) a musical work to arrange
- Publisher
 - » An owner of a song
 - » Primary ownership tool – Deed of Assignment
 - » Not well understood in SA

The Exclusive Right to do.....or not to do

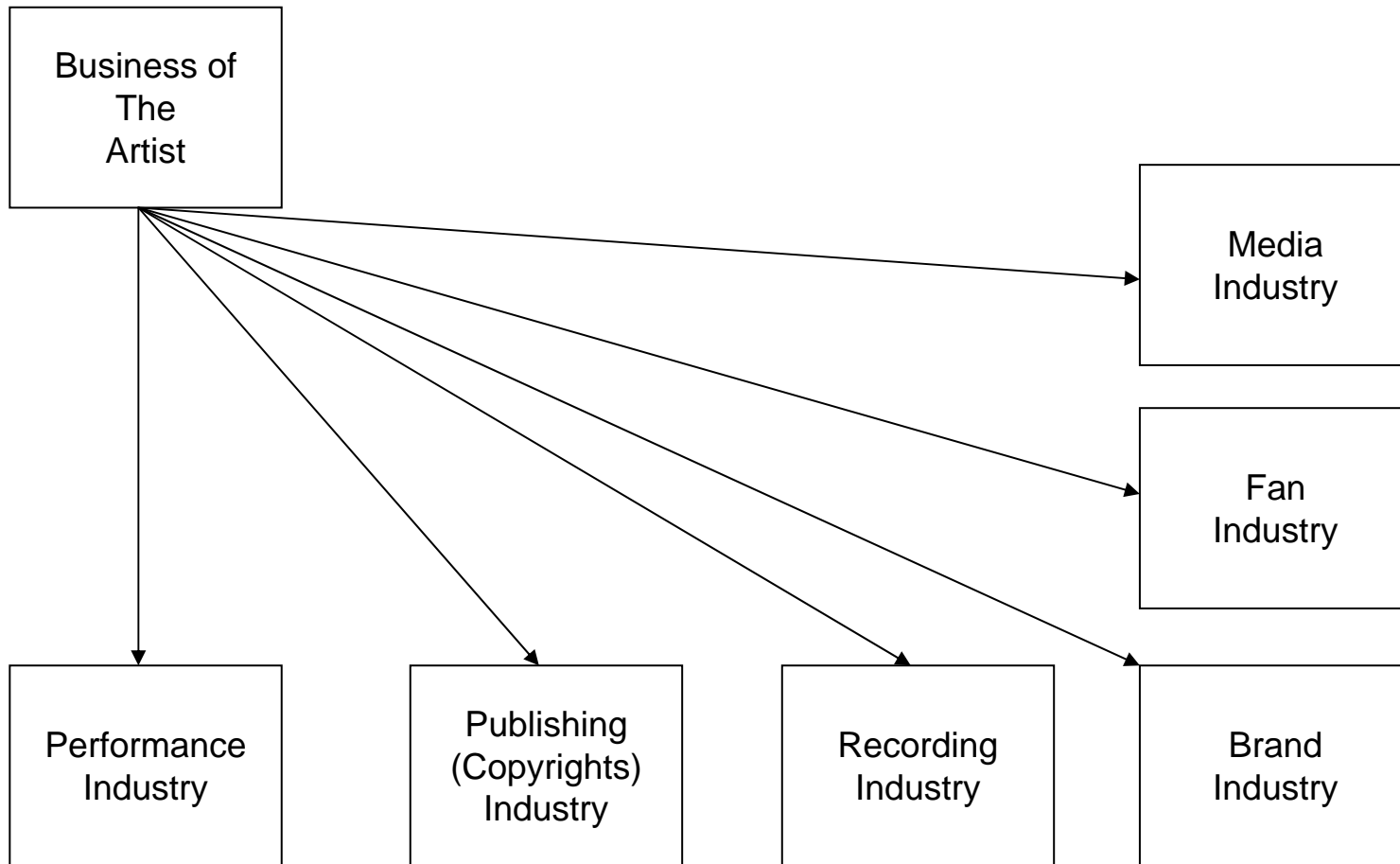
- **make or authorize the making of any record, tape, compact disc, perforate roll, television film, cinematograph film, videocassette, or other contrivance by means of which the work may be mechanically performed;**
- **publishing the work**
- **performing the work in public or authorizing such public performance (including but not limited to, performance by means of mechanical devices such as records, tapes, compact discs, cinematograph films, television films or tapes or videocassettes) ;**
- **broadcasting or televising the work or authorizing the broadcasting or televising thereof;**
- **transmitting the work in a diffusion service or authorizing such transmission;**
- **making any adaptation of the work;**
- **Synchronize the work**
- **embodying the work in a commercial advertisement in any form**
- **Digitizing the work, including all internet, digital, cellular and electronic trade or use now or hereinafter known**

The Essence of the Music Business

– The Song.... And what you do with it



The Seven Sectors of the Music Business



Deciding Musical Work Copyright Shares... the democracy approach and the mathematic approach

- Instrumental

50% - Melody(s)	50% - All Instrumentation
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- With lyrics

25% - Melody (s)	25% - All Instrumentation	25% - Verses	25% - Chorus's
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- With Arrangement

16.67% Melody	16.67% Instrum.	16.67% Arrangement	16.67% Verse	16.67% Chorus	16.67% Arrangement
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Composer-author/owner - Songs

- Understand where & when \$\$\$\$ is made or earned
 - » When a song is sold on a record, an MP3, a ringtone or dropped into a jukebox
 - » When a song is performed live
 - » When a song is used on TV or radio
 - » When a song is used in a film or advertisement
 - » When a song is remixed or adapted
- Understand 'where' and 'when' to place 'what' paper
- Deeds of Assignment
- SAMRO & SARRAL membership
- Notification to SAMRO & SARRAL
- With record's song earnings (mechanicals) are always paid by the distributor directly to SARRAL and/or copyright owners/representatives

The Role of Publishers

- To publish means to own the copyright, whether one created the musical work or not
- Ownership confirmed via a Deed of Assignment
- Deed describes a relationship between authors and publishers (splits)
- Administrative publishers
 - » File publisher notifications & live event notifications
 - » Checks copyright control/suspense acc files
 - » Respond to license requests
 - » Checks on artist notifications & ensures deeds are in place
- Exploitative publishers
 - » Do all administrative (as above) functions
 - » Actively market writers and titles to users
 - » Have ongoing communication with collection societies
 - » Ensure titles are formatted on all platforms
 - » Active relationships with film, TV and advertising industries
- With Collection societies
 - » File publisher notifications
 - » Ensure composer, author arranger notifications are correct
 - » Notify live performances
 - » Check suspense/control and 'Warsaw' accounts

Administering copyrights.. The paperwork

- Musical Work Copyright
 - Deed of Assignment
 - Notifications
 - Stat sheets
 - Cue Sheets
 - statements
- Sound Recording Copyright
 - Proof of payment
 - Clearances/releases
 - Artist/producer agreements
 - statements

Collection Societies

- CISAC..the international confederation of rights societies
- BIEM – international association of mechanical rights societies
- 224 members
- Two kinds of societies, primarily – public performance and mechanical
- In South Africa – SAMRO (public performance) and SARRAL (mechanical) – both Gauteng based
- International reciprocal relationships- each society represents its members in its country, and those members of its sister societies in its country
- Important financial relationship for composers/authors/arrangers & publishers

Collection Societies in SA

- SARRAL

- » Mechanical and Synchronization Rights
- » Public Performance Rights in Sound Recordings (needletime)
- » 42 Mechanical Rights societies in the World
- » Small compared to performance rights
- » Authors, composers, arrangers, publishers are members
- » Issue licenses for members
- » Collect & distribute mechanical and synchronization monies for members
- » Administer blanket license agreements with broadcast and phonographic industries

- SAMRO

- » Public performance rights
- » 209 Performance Rights Societies in the World
- » Authors, composers, arrangers, publishers are members
- » Issue licenses for members
- » Collect & distribute performance rights monies for members
- » Administer blanket license agreements with broadcast industries
- » Licensing of facilities and venues for the public performance of music

Associations

- Recording Industry
 - Recording Industry of South Africa (RISA)
 - 4 Major Record Companies (Gallo, EMI, Universal, SonyBMG)
 - +/- 300 Independents
 - Represents recording industry interests & hosts awards
 - Manages the Video Producer Blanket License with broadcasters – collects & distributes royalties
 - Johannesburg based
 - Association of Independent Record Labels (AIRCO)
 - +/- 100 Independents (90%+ are also RISA members)
 - Represents independent recording industry interests
 - Johannesburg based
- Publishing Industry
 - Commercial Composers Association (CCA)
 - Represents the interests of composers working in the advertising industry
 - National Organisation of Reproductive Rights in Music NORRM (NORM)
 - 4 Major publishers (Gallo, EMI, Universal, SonyBMG)
 - +/- 70 publisher members
 - Focused on all mechanical rights
 - Represents the interests of publishers.. Dominated by majors
 - Administers blanket mechanical license agreements on behalf of publishers, as well as library music
 - Issues individual licenses
 - Collects and distributes on behalf of members
 - Johannesburg based
- General
 - CWASA – Creative Workers Union of South Africa
 - Formerly MUSA (Musicians Union) and PAWE (Performing Arts Workers Equity)
 - Represents interests of actors and musicians
 - SABMA – SA Blind Musicians Association
 - Represents the interests of blind Musicians in South Africa
 - Johannesburg based

Permissions

- Permission is NOT required for:
 - Making a monophonic or polyphonic ringtone (however notification is legally obligatory)
 - Making a cover version of an existing (read made available for publication) song - (however notification is legally obligatory)
- Permissions (written authorization...NO VERBALS!!!!) are required for the following:-
 - Using Music in an Advert
 - Using Music in a film
 - Using Music in any form on TV
 - Making an adaptation
 - Using a sample
 - Putting original music (read unreleased) on any form of carrier (cassette, CD, VHS, DVD, MP3 etc)
 - Using a Cover version in respect of any of the above

Remixes

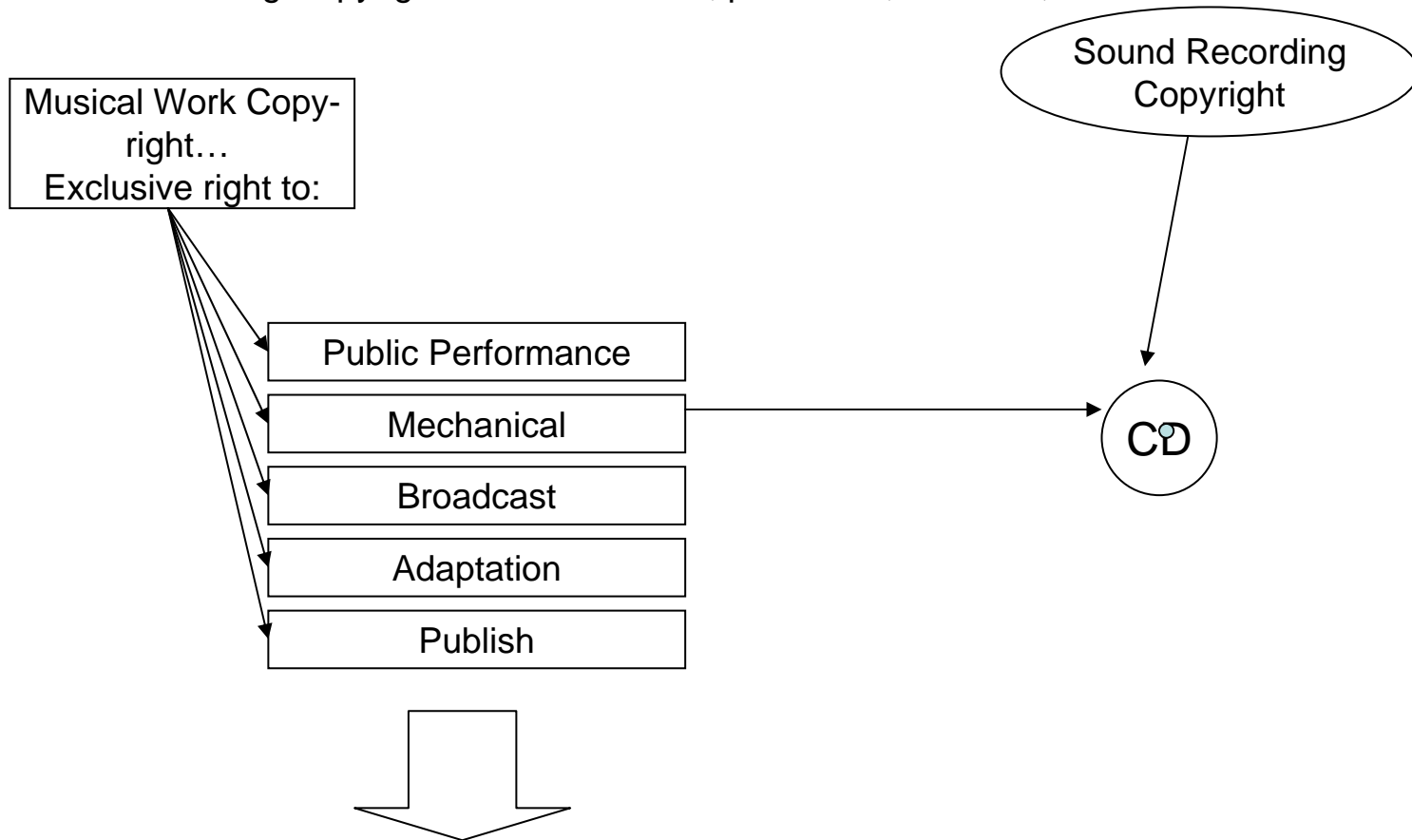
- What is a remix?...an adaptation...a new arrangement...one that contains 'old' copyright and 'new' copyright
- Why do remixes?... New songs and recordings of songs... (re) establishing new copyright in the arrangements... increasing the life of copyright of musical works
- What and who benefits...owners of songs, owners of recordings... creators and artists....society and culture at large
- Getting permissions prior...critical as to avoiding copyright infringement -

New Tech

- Real and pressing issue in the 21st Century
- Relates to the ages of the music industry, and is driven, as before, by technology.
- Dramatically increases the number of formats that carry music
- The relationship for any artist with new tech should be driven by the all stakeholders in the song and the performance of the song
- Brings two other giant industry sectors to the music industry, namely
 - » The Telcoms Industry
 - » The Computer Industry

4. Two copyrights that concern the music industry

- Musical Work Copyright...involves Authors, Composers, Arrangers & Publishers
- Sound Recording Copyright ..involves Artists, producers, remixers, label



Mechanical Rights

- **Phonographic Industries**
 - One copies a song, which requires a mechanical license, in order to make a sound recording...
 - Valued at 6.76% of wholesale price (Published Price to Dealer – PPD)
 - New tech industries tend to use a 5% of retail selling price
 - Governed by blanket license agreements
- **Broadcast Sectors**
 - Mechanical license required in order to broadcast music
 - A synchronization license (putting music with a visual image) is a form of mechanical license, and is also required
 - Valued at tariff rates set by the SARRAL and NORM on the basis of 30 seconds of usage
 - Governed by blanket license agreements

Neighbouring Rights

- Artist royalties
 - 6-12% of the Published Price to Dealer (PPD) **
 - All formats
 - Involves a record company
- Producer royalties
 - 3-5% of the Published Price to Dealer (PPD)**
- Occur from the sale of records
- Important factor for 'needletime'

** - the 'wholesale' price

Artist & Producer Royalties – Neighbouring Rights

- **Artist Royalties**
 - Paid to the Artist
 - Based on what is actually sold
 - 8-12% of PPD
 - Packaging deductions apply
 - Paid every 6 months by record labels
- **Producer Royalties**
 - Paid to the producer
 - Based on what is actually sold
 - 4-6% of PPD
 - Packaging deductions apply
 - Paid every 6 months by record labels