

## **The Methods and Madness to Songwriter Splits**

No one ever thought *Rescue Me*\* would be sung outside the church. In fact, the two members of the worship team who believe they were responsible for writing the song never even thought the congregation would hear it. That was six months before the song was recorded by the church on its newest EP. That was a year before the song was picked up by one of the major worship labels and is now being sung in churches across the globe. Which was before CCLI and ASCAP were sending out checks for substantial amounts of cash. Which was also before everyone started asking, “who wrote this song, anyway?”

To fully understand the problem, you need some history. First, let’s give everyone names. Mike is the worship team leader; he plays guitar and sings. Carol is the primary backing vocal. John plays bass. Chris plays drums. Tim plays the piano – sometimes. Frank runs the soundboard, but Rachel was running it on the night *Rescue Me* was recorded. The pastor is Greg, and the church – Anytown Community Church – owns all the recording equipment. Is that everyone? Well, just to be safe, we need to add the entire church congregation, since the original recording was live.

Now, how did it start? Back in June, Mike and Tim were having a practice session at Tim’s house. At one point following a song, Mike kept playing a different chord progression and Tim followed. After a few minutes, they were playing an entirely new melody. Knowing it felt right, they intuitively began working out the details of the verses and chorus. Within twenty minutes, they were playing the music to a new song. They stopped and decided to make notes and begin working on lyrics. That’s about the time when John called to see if they wanted to practice for the new songs they’d be playing during weekend services. Mike and Tim said “yes,” and John said he’s be right over.

By the time John arrived, Mike and Tim had all the chords written down, along with lyrics to the chorus. They were working on the first verse, and John came in with all the right words to finish it out. The other two verses were easy for the trio to finish, and by the end of the hour, the three were playing a vibrant and progressive worship song.

A few days later at worship practice, Tim introduced the song to the rest of the worship team. Chris loved it, but wanted to change the arrangement slightly to give it a “Hillsong” feel. With his background in production, Chris made simple changes that made the song feel much more “now” than it was before. They practiced it a few times without even noticing that pastor Greg was seated in the back, nodding his head.

What happened next was like a whirlwind. Pastor Greg asked them to play the song on Sunday. The congregation enjoyed it so much, they began requesting it every Sunday. The song was recommended for the church’s new EP, which was recorded live at the church. A major worship label executive heard the song on a Spotify playlist, and fell in love with the song. It all happened so fast, no one ever stopped to ask the question – who owns *Rescue Me*, anyway? Up until that point, Mike and Tim had taken credit as the songwriters, but they weren’t sure how to share money with the other worship team members. Pastor Greg sensed discord and wanted it to stop. He called a meeting.

Pastor Greg called the meeting with the worship team, Frank, Rachel, and some of the members of the church board. He figured since everyone was a Christian, resolution of the matter would be simple. He also figured that since the church paid for the recording, it owned a portion of the song. Simple to him. Simple to everyone. But the situation wasn’t so simple. After hours of yelling and negotiating, the group finally agreed on the following: Mike and Tim each owned 25%; Chris and John each owned 12.5%; Rachel owned 3%; and the church owned 22%. The rationale was that since Mike and Tim wrote the majority of the song, they should own the largest

portion. Since Chris contributed an arrangement and John contributed some lyrics, they should be entitled at least a quarter of the song. Rachel's touch went into the recording of the song, and her contribution was worth at least 3%, while the church funded the recording and provided the equipment and congregation for the live recording, entitling it to 22%. Everyone left with something, but no one left happy (except for Rachel, because she didn't plan on getting anything).

Anything wrong with this outcome? Chances are, you're stumped already. Maybe a better question to ask is, "how would the legal system determine ownership?" What factors go into deciding who owns a song when the circumstances are questionable? To find an answer, you need a basic understanding of copyright law and some other areas of law. You also need common sense. Here's that approach.

According to Title 17, Section 102 of the United States Code, "copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." This is not only a mouthful, it is the starting point of any analysis of song ownership. It is where we must begin our analysis.\*\*

When Mike and Tim were playing the song, it was not "fixed" in any tangible medium of expression. It was a free-flowing arrangement of notes being played on instruments. It was capable of being fixed in a tangible medium, but it wasn't. However, once Mike and Tim made notes of the chords, they had created something capable of being protected by copyright law. Common sense would tell you, though, that the "copyright" wasn't complete, since the lyrics were still being worked out. The full song was not actually reduced to writing until John came along and added lyrics. While theoretically, Mike and Tim could have treated the song as a completed copyright prior to John arriving, they most likely didn't intend to, thus leaving open the possibility that John would be a co-author of the song.

Copyright law states that "a 'joint work' is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." Although resolution of this issue ultimately rests on the intentions of Mike, Tim and John, we can move forward, assuming that they each intended to be co-authors of the song. So, at this point it appears (at least for the purpose of this article) that you have three legitimate co-authors. However, you can quickly see the problem with proportions and contributions. Mike and Tim obviously contributed more to the copyright than John. Does this entitle them to a greater amount of ownership? Typically, yes. But what is that amount? As a general rule, it is negotiated among the songwriters.

Well, it appears that Mike, Tim and John are all co-authors of the song and therefore co-owners. But what about Chris and everyone else? Again, it should be based on intent. Did Mike, Tim and John intend for the song to be incomplete at the time they presented it to the worship team and pastor, or did they already believe they had written a complete song (i.e., complete copyright)? For our purposes, we will assume that they believed they were presenting a complete song. This is the most likely point that a copyright was "created," and ownership of the song was established.

What about Chris' arrangement? Shouldn't he be entitled to an ownership interest in the song, particularly since the song is now being played the way he suggested? This question is somewhat complicated, since the copyright already existed, and technically, a "derivative work" – a derivation of the original work – was created when Chris added the new arrangement. In theory, the copyright was already authored by Mike, Tim and John, however, Chris came along and added something to the song that was insubstantial to form its own original work, but substantial

enough to be recognized as “adding” to the original. This is probably the point where great minds diverge, but fairness might dictate that Chris would be entitled to authorship status attributable to the fact that *Rescue Me* was now being played the way he arranged it. On the other side of the coin, the argument could be made that Chris is entitled to nothing, since the copyright was already authored once he heard it, and his arrangement was a *de minimus* contribution. Also, it’s unlikely that Mike, Tim, and John *intended* for Chris to be a co-author, and as already explained above, intent is a critical component for joint authorship to exist.

Rachel is waiting anxiously for her answer, because she didn’t expect anything in the first place. She was right not to expect anything in regard to ownership of the song, since she contributed nothing to the copyright in the musical composition. She may, however, have a claim for authorship in the *recording of the song* (e.g., *the sound recording*), but not in the writing of the song itself. Since these are two separate copyrights, she should not be deemed an author of *Rescue Me*.

Finally, the church wants to know how its authorship would be impacted. Realistically, the church (and the congregation) shouldn’t be considered an author either, since the copyright in the song existed before it was ever brought into the church. The church’s only claim for authorship would relate to the recording of the song (i.e., the sound recording), much in the same way as Rachel. Therefore, the church should not be deemed an author of *Rescue Me*.

As you can see, ownership of the song should have been limited to Mike, Tim and John (and possibly Chris). Unfortunately, that was not the case. Other people were given credit for authorship of a song they never authored. An unfair result to say the least. And, for those in positions of leadership in churches, it’s easy to see why you should understand at least the basic nature of song ownership and copyright law before making a determination of ownership. In fact, in the instant circumstance, the church potentially opened itself up to litigation for its assumed persuasion in determining authorship of *Rescue Me*. The prudent route to determining song ownership is to implement a plan well in advance. The church and its worship team(s) should understand how ownership of songs will be determined, and such determination should be based on sound legal and practical concepts, not merely on uninformed “fairness” arguments.

~ Brock Shinen, Esq.

\* *Rescue Me* is a fictitious name of a song. All other names are also fictitious.

\*\* The reader should keep in mind that arguments may be made for varying results, and additional factors could result in a variety of outcomes. This article is intended to provide general information and considerations in determining song ownership. It is not intended to be legal advice or a substitute for actual legal analysis of your particular circumstances.