

A practical guide to music licensing

Copyrighted music can generate a significant income for rights owners, but they have to secure two different licences first, says **Burgundy Morgan**



Licensing music is one way that artists, songwriters, producers, record labels and music publishers can generate income and receive royalties for the music they own. Music is licensed for a variety of uses, such as for use in film, television, commercials, video games and other media where a third party wishes to use all or a portion of your music in connection with their service or product. These uses can generate significant income for the copyright owners of music.

However, only a proper copyright owner can grant the necessary rights for the use of music in film, television or other commercial endeavours. Anyone who wishes to acquire the rights needed to use music in film, television or in connection with any audio-visual work must first obtain two distinct and separate licences from the proper copyright owner: a master-use licence and a synchronisation licence.

What is the difference between the two licences?

A master-use licence is a written contract whereby the copyright owner of the sound recording permits another to use that sound recording for another purpose, such as in a film or television programme. Traditionally, record labels owned the copyright in musical sound recordings (commonly referred to as 'masters') that were recorded by artists on the record label's roster. As such, the record label was generally the proper party to grant master-use licences for the use of their sound recordings. The record label would administrate master-use licenses, collect the master-use licence fee and distribute a percentage of that fee to their recording artist while keeping the remainder as the record label's fee. However, in recent times, many independent recording artists and independent producers self-produce their own masters and thus retain ownership of their sound recordings. In such cases, the recording artist or producer would be the proper party to issue master-use licences and would be entitled to keep the income and fees generated from master-use licenses (or distribute the fees in accordance with their own internal contracts).

A synchronisation licence is a written contract whereby the copyright owner of the underlying musical composition (ie, the song), which is distinct from the copyright in the sound recording, permits another to use the musical composition in connection with a visual work, such as film, television, or other uses such as dance choreography. Traditionally, publishing companies would enter into agreements with songwriters in exchange for partial or total ownership of the copyright in the musical composition. As such, the publisher would grant synchronisation licences, collect fees on behalf of itself and the songwriter, and administer said fees in accordance with the percentages set forth in the agreements between the publisher and its songwriter. As with master-use licences, in recent times many independent artists who write their own songs are retaining the copyright to their musical compositions whereby the songwriting independent artist is entitled to keep all income and fees generated from synchronization licences.

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Licensing scenarios for sound recordings and musical compositions

To better help you understand and distinguish between these two distinct licences, consider the following hypothetical example. A famous musical composition, 'Best Song Ever Written!', was written

and recorded by well-known recording artist 'Pop Star'. Pop Star has a publishing contract with 'Publisher', who by contract is the exclusive entity authorised to issue synchronisation licences relating to the musical composition. Pop Star also has an exclusive recording contract with Record Label, which by contract owns the rights to all the master sound recordings for Pop Star.

Because the composition 'Best Song Ever Written!' is so famous, independent singer-songwriter 'Indie Artist' decides to record a cover song of 'Best Song Ever Written!'. Indie Artist self-produces, records and mixes the new sound recording herself on her own personal Pro-Tools recording system. As such, Indie Artist has not transferred her copyright to the sound recording to anyone and, unlike Pop Star, Indie Artist retains ownership of her sound recordings or, in other words, her masters.

Television production company 'Cool TV' wishes to use 'Best Song Ever Written!' in an upcoming television programme episode. If Cool TV wanted to license the sound recording made by Pop Star, it would need to secure a master-use licence from Record Label, which owns the copyright to the sound recording. If Cool TV wanted to license the sound recording made by Indie Artist it would need to secure the licence directly from Indie Artist since she did not assign her copyright in the sound recording to any record label and as such she retains all copyright ownership to the master sound recording for her version.

However, no matter which sound recording version Cool TV prefers, Cool TV must obtain a synchronisation licence from Publisher in order to use the musical composition 'Best Song Ever Written!' If, for whatever reason, Publisher refuses to let Cool TV use the song, then the deal is dead in the water, even if Cool TV was able to secure a master-use licence for the sound recording.

As a practical matter, it is *always* more efficient and effective to secure the synchronisation licence from the publisher first because without permission from the copyright owner of the underlying musical composition, permission from the copyright owner of the sound recording means nil. A serious rookie mistake occurs when a party actually pays a licence fee to the copyright owner of the sound recording and then later discovers that the owner of the musical composition is either unwilling to grant a licence for the use of the musical composition or is requesting money in excess of the budget for the use of the musical composition. In this scenario, it is unlikely that the owner of the sound recording will refund monies already paid for the master-use licence. In my years in licensing, I have personal knowledge of film production company employees being fired for this costly mistake. But knowledge is power, and this mistake is easily avoided by obtaining rights to the musical composition first, followed by obtaining the rights to the sound recording. In an abundance of caution, one should require that any obligation to pay the licensing fee to either copyright owner is dependent on securing rights to both the musical composition and sound recording.

Clearing a musical composition and sound recording

One should review public records to identify the proper rightsholders and conduct proper due diligence and change of title research. These public records include database searches of three performing rights organisations - American Society of Composers, Authors and Publishers, Broadcast Music, Inc and the Society of European Stage Authors and Composers, as well as other affiliation companies such as the Harry Fox Agency and Sound Exchange. The search tools on these organisations' respective websites contain a wealth of information relating to rightsholders, including the identity of writers, contact information for the writers' respective publishers and identification of associated record labels and/or production companies. As a practice tip, often publishing

company representatives will be able to provide accurate contact information for the record label representative and vice-versa.

Further, proper chain of title research must include a search of the US Copyright Office public records to cross-check and confirm the identity of the writers, publishers, record labels and producers. One should carefully review the copyright claimant records associated with a particular musical composition or sound recording and be aware of any incorrect or inconsistent information that may raise red flags to ensure that you contact the proper copyright owners to secure the rights you require.

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Discussion

Synchronisation licences grant permission to synchronise a musical composition to a visual work (such as in connection with film or television) and a master-use licence grants permission to use the sound recording. Generally, synchronisation licences are granted by the publishing company and master-use licenses are granted by the record label. However, these licences may be obtained directly from independent writers and artists who have retained ownership of their copyright. As a practical matter, it is imperative that one clears the rights to the musical composition first since without those rights, rights to the sound recording are insufficient. Lastly, one must conduct proper due diligence and chain of title research to ensure that one is securing necessary rights from the proper copyright owner. By doing so, costly copyright infringement litigation can be avoided.

Author



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