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Client Alert: What Every Business Needs to Know About Using Music For Business Purposes

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CLIENT ALERT | 12.3.2013

Most businesses use music in some capacity to create the right ambiance, draw a crowd or even to pacify holding telephone customers. The right music can **influence** purchasing decisions, how fast patrons at a restaurant eat and how satisfied customers feel in their dealings with your business. For these reasons, music is a valuable asset to your business. However, it is also a valuable asset to those that create it. A license is generally required for all public uses of music including use on a company website, at a holiday party, at conferences, in waiting rooms, in promotional videos and even use as background music to enhance a consumers experience. Proper music licensing not only supports the livelihood of its creators but also keeps your business out of court.

Why is music licensing required?

The US Copyright Act grants authors of original works, like music, that are fixed in some tangible medium the exclusive right to copy, distribute, perform, display and modify their works.

Who are the owners of music?

The US Copyright Act typically provides that the author is the owner of the work. Unlike other copyrightable works, music is comprised of two works. First is the **composition** (the underlying musical notes and lyrics) initially owned by the composers. Second is the **recording** (the fixation of sound) initially owned by the musicians and vocalists. For each composition there can be many recordings. For example, the composition *Imagine* was composed by John Lennon and has been recorded by John Lennon, Chris Cornell, A Perfect Circle, Blues Traveler and Herbie Hancock to name a few. Each recording is a separate copyrightable work distinctive from the other recordings and from the composition.

In the music industry, the rights to these works are usually assigned via contract to third parties such as music publishers for compositions and record companies for recordings.

What are the common types of music licenses?

There are many different types of licenses involving music. A few of the most common are briefly discussed below. Multiple types of licenses may be required from several different sources for a single music use due to the dual nature of music (i.e.- the composition and the recording) and collaboration in the writing and recording of music.

Type

Use

Examples

Rights Holder

Rate

Mechanical License

The right to create and distribute an **audio only** reproduction of a **composition**.

creating a recording of a composition

adding a composition on a compilation album

offering downloads or ringtones of composition

Mechanical rights are usually controlled by music publishers but many assign the administration to the licensing agent [Harry Fox Agency](#).

The royalty rates for mechanical licenses are governed by federal statute but can be modified by contract.

Synchronization License

(or “Synch”)

The right to reproduce and distribute an **audio visual** work using a **composition**.

using a composition in a movie, commercial or television show

using a composition in a promotional video

Synchronization rights are usually controlled by music publishers.

The royalty rates for synch licenses are governed by contract.

Master Use

The right to reproduce and distribute a **recording**.

adding a recording on a compilation album

using a recording in an audio visual work like a movie, commercial or television show

using a recording in a product like a greeting card or toy

Master rights are usually controlled by record companies.

The royalty rates for master licenses are governed by contract.

Performance-Compositions

The right to **publicly** perform a **composition**.

playing a composition on the radio

offering streams of a composition over the internet

broadcasting a composition in an audio visual work like a movie, commercial or television show

using a composition on a website

performing compositions live for example at a bar or concert

The performance right for compositions are usually owned by music publishers but typically controlled by a performing rights organization (PRO). The three PROs in the US are ASCAP, BMI and SESAC. Having a license with all three of these organizations is best practice because each PRO controls different songs and can even control different portions of the same song. www.ascap.com, www.bmi.com, www.sesac.com

The royalty rates are governed by contract and are highly dependent on the usage.

Performance- Master

The right to **publicly** perform a **recording**.

offering streams of a recording over the internet

The performance right for recordings is controlled by [Sound Exchange](#).

Note that there is currently no public performance right for the use of a recording over terrestrial radio.

The royalty rates are governed by federal statute.

Music licensing is a complex balance of many rights, owners and representatives. As a general rule, a license is always needed for use of a composition but may not be needed for the use of a recording. If your company uses music in any capacity an annual audit of your music licenses is recommended because music usage changes with your business. We can help evaluate your company's music licensing needs and work negotiate and obtain the proper licenses.