



MUSIC IN MOVIES

Frequently Asked Questions

presented by:



WHEN DO I NEED TO GET A LICENSE?

If you are using a copyrighted piece of music (music owned/created by someone other than yourself) and if you are making a reproduction of that music in connection with a movie, cartoon, commercial, TV show etc. you must get permission to use the composition from the copyright owner. There may be other instances where a license is required.

WHAT KIND OF LICENSE DO I NEED?

Your particular requirements for the use of the music will dictate the type of license you will need. In all cases, however, you will have to contact the copyright owner or the person who controls the rights to the composition. If you are using a sound recording, you must obtain a license from the owner of that specific recording. If you are licensing a song for use in a motion picture with the potential for the song to be released on a soundtrack album, pre-existing songwriter agreements and record contracts may have a profound impact on secondary-use licenses.

There are several different types of licenses that you may need, depending upon your specific requirements. The 3 most common are:

- Synchronization License
- Master Recording License
- Mechanical License (for CDs, cassettes, record albums)

WHAT IS A SYNCHRONIZATION LICENSE AND HOW IS IT DIFFERENT FROM A MASTER RECORDING LICENSE?

Often referred to as a "Sync" license, a Synchronization License allows the user to reproduce a musical composition in connection with, or in timed relation to, a visual image: for example, in a motion picture, video, or commercial. Therefore, if you wish to use the composition (music), "Ain't Nothing Like The Real Thing" on a beverage commercial, you must first obtain a Synchronization License from the copyright owner of the music.

However, if you want to use the actual recording "Ain't Nothing Like The Real Thing", recorded by Marvin Gaye and Tammy Terrell, then you must also obtain a Master Recording License from the copyright owner of the sound recording. A Master License allows the use of an actual recording. There is a distinct difference between a Synchronization License and a Master License, requiring two separate negotiations. If you need the master rights, you must always secure the synch rights along with it. However, you may choose to rerecord the song to your specifications, in which case you will only be required to obtain the "Synch" rights.

CAN I CHANGE THE LYRICS?

NO! Not even one word! Most composers are very protective about their songs. If it is your intent to make any lyric changes or any adaptation of the music, you must first get permission from the copyright holder. This will, more than likely, necessitate obtaining permission directly from the composers, their management, their attorneys or their estates. Parody lyrics must go through the appropriate approval process before incorporating them into the song.

HOW DO I GO ABOUT GETTING A LICENSE?

The process of licensing begins with some basic research into the ownership of the composition and/or the actual recording you are contemplating using. It is important that you have a clear idea of the nature and scope of the terms that you need. Once it has been determined what type of license is required for your project, the task of clearing the music and negotiating the license and fees begins.

HOW LONG DOES IT TAKE?

Many factors contribute to determining how long it will take to negotiate a license. Depending upon the particular song and the scope of the license, it may take anywhere from a few days to several weeks to research, negotiate and finalize a music licensing agreement. Numerous companies/organizations administer the copyrights for artists and publishers. In most cases, there are contractual obligations that must be followed when discussing license fees with potential users of music. The composers or their estates may need to be contacted directly for approval.

WHAT ABOUT UNION FEES?

If you choose to license an existing recording of a song, you may be obligated to pay certain union and/or guild costs in addition to the synchronization and master recording license fees. These are generally considered re-use fees because you are taking an existing recording and re-using it for another purpose. You may be required to pay musicians' fees through the American Federation of Musicians (AFM) and performers through SAG and/or AFTRA.

WHAT IS A SOUND-ALIKE?

A sound-alike is a recording which mimics the unique sound or style of a particular recording artist. Even if you have obtained a synchronization license, this does not entitle you to make a sound-alike recording similar to the original. Many lawsuits have been won by the original performer in sound-alike cases.

HOW DO I KNOW WHETHER OR NOT A COMPOSITION IS IN THE PUBLIC DOMAIN?

A work is in the public domain (PD) if copyright protection has expired or if copyright protection was never secured. Determining whether a work is in the public domain is actually a complicated legal issue based on copyright laws which differ in many countries. A work that is in the public domain in the United States may be protected elsewhere. Arrangements of public domain works may also be copyrighted.

Unfortunately, there is no resource to definitively identify PD material. One must be extremely cautious before assuming that a work is in the public domain. The issue of public domain status, duration of copyright and copyright renewal can be very complex. These issues must be researched carefully to avoid copyright infringement.

WHY CAN'T I LICENSE THE SONG I WANT TO USE?

A request for a license may be denied for any number of reasons. The composer may not want to associate himself with the subject matter or the genre of a particular product or project. In some instances, the publisher may feel that the exposure of the song will preclude its future use by someone else or the cost to license a particular piece of music may be prohibitive to young filmmakers, especially if the music is commercially popular.

Music clearance and music publishing issues can be complicated. This information is for reference only. Please consult the proper organization(s) before using ANY music in any project...better safe than sorry...



www.bmi.com



www.ascap.com



Film Musicians
Secondary Markets Fund
www.fmsmf.org