



THE COPYRIGHT HANDBOOK

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AN INTRODUCTION TO MUSIC COPYRIGHTS AND LICENSING

THIS BOOK IS INTENDED TO PROVIDE AN OVERVIEW OF ESSENTIAL COPYRIGHT ISSUES THAT EVERY MUSICIAN SHOULD KNOW.

This book is intended to provide an overview of essential copyright issues that every musician should know.

Copyright rules define much of the music business, shaping the practices that drive recording and touring deals. Washington has understood the importance of the music business, passing and amending copyright laws to benefit and manage the music industry for well over a century. Despite the importance of this, many artists have very little information regarding copyright, or worse, rely on knowledge about rules that have changed dramatically in the past quarter century.

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CHAPTER 1

COPYRIGHTS

When does a copyright begin?

For a new song or other work, copyright begins at the moment of fixation — when the music and lyrics have been set down on paper, recorded, or stored on a computer. Copyright protects the musician even if the song is never registered with the Copyright Office. Mailing a copy of the work to yourself provides no additional legal protection and is unlikely to prove useful evidence for establishing the date a song was written.

The copyright in the composition is distinct from the copyright in the sound recording. Generally speaking, the sound recording can be thought of as the master — the recorded performance of the composition. When registering a newly published song, the musician should be sure to protect the copyright in the composition separately from the copyright in the sound recording.

What can you Copyright?

Before you understand what you can copyright you have to be clear on the definitions of each part of the whole song.

Musical Works and Sound Recordings:

A Musical Work and a Sound Recording of a Musical Work have separate and extremely different copyright protection.

- I. Musical Work: Musical Work, Song, Composition: Lyrics, Melody, and Musical Arrangement of Notes that Define a Song or Musical Composition
Sheet Music
- II. Sound Recording: The Process of Fixing Music or Sound on a Medium that can reproduce and play back the music upon Demand i.e. CD, Record, MP3, WAV

When should I file for a Copyright?

There is little or no value to registering a composition until it has been published. This typically means selling or distributing copies of the song to the public. Posting a new recording or video to YouTube will constitute publication. Live performance of a song does not publish the song.

While not required, registration of published music or recordings has a number of benefits. Copyright registration provides the right to seek attorneys' fees and statutory damages. Registration will be required prior to filing a lawsuit to enforce the copyright.

Registration is also simple. Until recently, a musician would file a Form-PA with the Copyright Office. While this is still possible, the Copyright Office has removed the Form-PA from its website (www.copyright.gov) to encourage users to file electronically. Registration should be done on Form-CO. This form is used for both the composition and the sound recording. The cost of filing is \$35.00 for electronic filing or \$45.00 for paper filing. Paper filing also takes the Copyright Office significantly longer to complete. In addition to the registration, two copies of the published composition must also be deposited with the Copyright Office.

How long does the Copyright Last?

The copyright will continue to protect the composition for seventy years beyond the life of the author. If the composition is created by a corporation, the term will be ninety-five years. When the song is jointly authored, the seventy years will run from death of the last living author. In most situations, the author of a song will be the individual composer or team of composers and lyricists. However, situations occur where the members of the band have arranged to work as employees for the band as a corporation or limited liability company. In this case, band members would be creating the work as a work-for-hire, and the corporation/LLC would be the author. There are a few other situations where the composer will be asked to sign a work-for-hire agreement.

For over a century, Congress has recognized that musicians are particularly vulnerable in market negotiations for the rights to their music. For songs written after 1978, a copyright contract can be terminated by the author 35 years following the date of the copyright transfer or grant. This right is unavailable to any composition made as a work-for-hire.

What happens with a Copyright?

By industry tradition, the copyright in the composition is managed by music publishing companies while the sound recordings are managed by the record labels. Music publishers may provide value for composers because these companies seek to promote the use of compositions in their catalog for use in films, television, advertising, ringtones and video games in addition to sheet music and music books. The publisher generally receives a percent of the composition revenue in exchange for these services. The publisher will manage the sales of the composition and typically handle all the copyright registration and deposit requirements.

By registering the work with the Copyright Office when works are published, and working with Harry Fox Agency and a performing rights society, the composer can maximize the opportunities to earn revenue from the compositions. Record labels — including independent labels — have the additional opportunity to earn royalties through the SoundExchange collections. Through these various organizations, an independent artist can be positioned to earn revenue from all of the sources created by copyright law. Through these organizations and through the rights of termination granted by Congress, copyright law provides many tools to enhance the livelihood of composers and artists.

Cover Songs:

Cover songs reflect the limited exclusivity provided by copyright. The original copyright owner has an exclusive right to publish or release the first sound recording of a song. After that, all other performers have the right to cut their own version of the song.

To release a cover version of a song, a musician must pay the compulsory or government-set rate for use of the song. Known as mechanical rights, the payment gives the musician the right to use the music in its own sound recording or master. Cover songs can be released on CDs or digital downloads. The statutory right to make a cover song does not extend to movie soundtracks, video games or other audiovisual works. For these uses, a license must be obtained from the copyright holder.

Under the law, the compulsory fee is paid through the Copyright Office to the copyright owners of the composition. Presently, the rates are the higher of 9.1 cents per song or 1.75 cents per minute of playing time. To better streamline the process, a nonprofit organization, the Harry Fox Agency, provides an easy to use website that provides a much simpler licensing system than licensing through the Copyright Office. For small runs of under 2,500 CDs or digital downloads, Harry Fox provides an online service called Songfile which makes for easy licensing of any of the 2 million songs in the Songfile database.

The version of the song can vary quite a bit from the original song. It can be arranged as needed to fit the performer, "but the arrangement shall not change the basic melody or fundamental character of the work." More importantly, the arranger of a cover cannot receive a copyright on the new version without the express permission of the original copyright owner.

Unlike the mechanical royalty, the public performance royalties are not determined through congressional action. Instead, the three performing rights societies — ASCAP, BMI and SESAC — license the venues where music is performed publicly. Public performances include live shows at

public venues such as bars, restaurants, and auditoriums as well as performances of pre-recorded music on radio, television, the Internet, and at public venues.

For a musician, membership in a performing rights society provides a revenue stream that will be based on the popularity of the music. The funds earned by the performing rights society are distributed to the members based on record sales and airplay. Because copyright also protects the public performance rights of digital sound recordings, the organization SoundExchange serves to collect public performance fees owed to the copyright holder of the digital master — the record labels — based on a statutory license rate which continues to be the subject of great controversy and ongoing negotiations.

Copyright and the Public Domain:

Fortunately or unfortunately depending on which side of this you fall, copyrights eventually expire and the owner no longer has no exclusive rights. All compositions not protected under copyright law are said to be in the public domain. A work is in the public domain when no one on this entire planet can find any law which gives them legal claim to that property. Public domain is the complete absence of any law allowing ownership of a property. If you can prove that a composition is in the public domain, you can use the work any way you can imagine. You can arrange, reproduce, perform, record, publish it, and use or sell it commercially any way you like.

Authors own the exclusive rights to their compositions. This is called a copyright and the composition is protected for many years--even if the copyright is never registered with the copyright office. A composition is considered to be "intellectual property". The copyright may be sold, transferred, or inherited--but the copyright still endures.

Public Domain Music and Sound Recordings Basics:

Musical Works published with a valid Copyright Notice of 1922 or Earlier are in the public domain in the United States. Essentially ALL Sound Recordings are under copyright protection until 2067 in the United States.

If music or lyrics are under copyright protection:

You CANNOT reproduce the music or lyrics

You CANNOT distribute the music or lyrics either for free, for no profit, or for profit

You CANNOT perform the music or lyrics in public

You CANNOT play a recording of the music or lyrics in public--even if you own the CD

You CANNOT make a derivative work or arrangement for public use in any form

Copyright protection outside the USA is determined by the laws of the country where you wish to use a work. Copyright protection may be 50 to 70 years after the death of the last surviving author, 95 years from publication date, or other copyright protection term.

For example, The children's song, "Mary Had A Little Lamb" is absolutely in the public domain worldwide, and it can be freely used by anyone. However, in the USA, no sound recordings of "Mary Had A Little Lamb" are in the public domain. It is imperative that you understand the difference between a musical work and a sound recording when using public domain music.

CHAPTER 2

INTRODUCTION TO MUSIC LICENSING

Music Licensing Basics:

While there are many ways music is licensed there are 3 primary factors that go into determining music licensing rates.

Media – Term – Territory

Media:

This is essentially the “what” of a music license. Will it be broadcast on TV, streamed on the internet, or will it be used for an in-house presentation? Media can be any one platform, or pretty much any combination of anything you can think of.

Term:

This is the “when” of a music license. Licenses can be as short as a one-time usage or as long as eternity (called perpetuity). While there are few times as an artist you would want to license a song in perpetuity, this is something music libraries do with relative frequency. It also saves a huge headache for the producing company, and keep in mind a license in perpetuity is only for the ONE usage outlined in the media definition.

Territory:

This is the “where” of a music license. This will delineate where exactly this particular project is going to show up. Will it show up all over the world? Will it just be in Ohio? Maybe it’s going to be shown at a convention center. Territories can range from just one specific location all the way to “throughout the universe”

Basic License Types:

Master Use License:

A phonographic copyright license to pay recording owners for music used in film, video, or TV soundtracks. There is no fixed fee for master use licenses.

Mechanical Rights:

A mechanical right is the right to record and distribute (without visual images) a song for private use. Mechanical rights or a mechanical license must be obtained in order to lawfully make and distribute records, CD's and tapes.

Multimedia License

CD Interactive (CD-I), CD-ROM (read only memory), Karaoke and Computer Games are examples of Multimedia License uses. Licensing in this area is still fuzzy, and as such, only limited rights are being granted in many instances. This is where the fewest industry standards and practices have been established. With many types of interactive multimedia products, music is not necessarily used in the same sense as it is with CDs, DVDs or TV uses (linear uses). Some of the new media allows manipulation of the music (such as extracting the flute in an orchestral work or taking the guitar part out of a pop song so the user can play along). In some cases, the user can produce their own version of the composition (kinda like being your own producer). This is considered a “non-linear” use and one of the reasons rights holders are being very cautious about Multimedia Licenses.

Per-Program License:

This is a license similar to the blanket license in that it authorizes a radio or television broadcaster to use the works. However, the license is designed to cover use of a piece of music in a specific radio or television program, requiring that the user keep track of all music used. Also, the

user must be certain to obtain rights for all the music used in programs not covered by the license.

Performing Rights Licensing:

The "blanket" licensing rights are the licensing rights the "PRO"s administer with radio stations, television stations, clubs, restaurants, stores, digital streaming services, etc. Songwriters and publishers normally belong to one if they have any exploited songs. For the price of these blanket licenses (which vary depending on the size of the broadcaster) the broadcaster can play all the BMI, ASCAP or SESAC songs an unlimited number of times for a measured period of time. These 'plays' are tracked and the pool of blanket license money is divided in proportion to the number of plays and the value of plays.

Pre-Cleared Music:

Music that is ready to be licensed for various commercial uses including video, film, advertising and the like. See also Film Music.

Print Rights Licensing:

Sheet music, song folios, scores or notation in any printed or digital form released for sale. Once sold, printed music earns royalties from the print rights license which the publisher negotiated.

Public Domain:

This refers to the status of a work having no copyright protection and, therefore, belonging to the world. When a work is "in" or has "fallen into" public domain it means it is available for unrestricted use by anyone. Permission and/or payment are not required for use. This can never be recaptured by the owner except with respect to works eligible for restoration of copyright, once a work falls into the public domain ("PD").

Musician vs. Music Supervisor

Gabriel Gordon is a musician who plays so often on both coasts; he has an L.A. band, a New York band, and he tours with Natalie Merchant and does session guitar work (his work has been heard on everything from California Lottery commercials to Major Label Records). He observes that "There are people who make a lot of money writing music for television that 'sounds like' other artists. It would be great if they would use the real artists like me who have great songs but no break with a big label. I am for licensing just to let people hear the real music -- the stuff that was written with heart and mind, not just for a paycheck."

Joel C. High, former VP of music and soundtracks for Lions Gate Entertainment and now President of Creative Control Entertainment, displays the excitement that many of us have for making music work with images. "We often have directors who are greatly inspired by music and who may be passionate about acquiring a song that wouldn't normally fit in the budget of that film or television project. That's when we, as music supervisors, have to try to bring that same fervor to the negotiating process. We try to go to bat for our filmmakers in such a way that it benefits the picture and gives the best possible exposure for the musical artist. We want to get the absolutely perfect music for the scene and often the only way that can happen is by getting the recording artist to see the merits of having their song in a film - to consider the way their song is used so they will see benefits beyond just the financial one."

A Director of Copyright and Licensing at a major independent publishing company had this to say: "Obviously, licensing music in film/TV is a wonderful way to get exposure, although for new artists, it will probably not be lucrative. And of course, there are things writers/artists should take into consideration when someone requests to use their music: Avoid giving broad rights away for free! This sets a bad precedent in the community, especially for new artists/writers, and it devalues their work."

CHAPTER 3

MUSIC LICENSING 101

Overview

Music can be used in four broad categories under copyright law: Adaptation, Recording, Reproduction, and Public Performance. Depending on where and how someone is going to use a song, there are mechanical rights and synchronization rights that have to be negotiated, and the various parties involved may include the songwriter, publisher, and record company, usually holder of the master rights.

Well, that last part doesn't sound so complicated. Oh really? Consider that there may be multiple songwriters, each with their own publisher for their share of the song. Song copyrights are held by music publishers (which may be the artist, but more often is a third party), while sound recordings (the masters) are controlled by record companies (which also may be the artist).

Where music meets licensing, there's money to be made. How much money? We have all read about the multi-million-dollar deals for icon bands like the Rolling Stones and Led Zeppelin, but what about the money for the rest of us? There are independent composers and production houses that have been able to charge anywhere between \$1.00 and \$250,000 (U.S.) for a single license.

That's correct: he said a quarter of a million dollars. And there are a great many places to earn money from music. For example, there are more TV shows on more cable channels than ever before. There are oodles of commercials. There are tons of electronic games and toys. There are corporate video productions galore. There are big movies, little movies, and direct-to-DVD movies. And they all are potential places to put your music, if the rights can be cleared.

Goldmine or Minefield

The world of music clearance can be a goldmine or a minefield.

The average fee is usually between \$4,000 - \$6,000 per side (Master & Synch). It really comes down to how badly they want to use the song and how big a hit it was."

Those two words, "Master" and "Synch" indicate part of the problem for the average singer/songwriter who hopes to have a song appear on a soundtrack. Before you can start earning money, there's a lot to know. The facts are so important that NARIP, *the National Association of Record Industry Professionals*, held an all-day workshop on the topic.

Music Clearance

So what, exactly, is "Music Clearance"? Simple: getting permission from rights holders to use music in your production. But what rights? The song's copyright is held by the writers (or the estate of the artists, or whoever was sold the rights). The master recording is held by whoever controls the original recorded version of the song.

There are generally TWO parts of music clearance & licensing:

A synchronization license is issued by the publisher for the use of the song/composition, and;

A master use license is issued by whoever holds the rights to the specific RECORDING of the song/composition.

For famous/known copyrights and/or recordings get an expert or become one. It's not brain surgery, but the ins-and-outs and "who knows who can get what at a good price and fast" can be really important—meaning you may get your "yes" or "no" answer in a couple of weeks as opposed to a couple of months.

Consider this: you can get permission from the publisher without permission from the record company and you are fine if you record a new version of the song. But without the publisher's permission, the master recording license does you no good at all.

The field is very competitive. Former head of A&R at Epic/Sony, Capitol Records, and EMI-America, Don Grierson, notes that "nearly everyone in the music industry seems to be aiming at the film/TV and commercial licensing markets. There is intense competition. It can come down to relationships on some occasions, but often it is determined by the ease with which you can obtain the clearance."

Negotiating the Fees

When it comes to Synch Licensing, there are a number of factors that determine what the fee is going to be. Some of those include:

Territory: USA, World, Provincial?
Media: Theatrical, Radio, Television, DVD/Video, New technology?
Usage: Featured Instrumental, On Camera, Background Instrumental, Vocal?
Length: Entire composition, 30 seconds or part thereof?
Version: Re-record or original recording?
Section: What melody/part of the song is being used? The most notable widely known chorus? Or just an unmemorable line from the 3rd verse?

But even once you have sorted out who owns what and where something is going to be used, there's the legal terminology, with contracts likely to contain such phrases as "World excluding the BRT's," "Rear Window," "now known or hereafter devised," "MFN," "Pro Rata Share," "Third Party Payments," and even "Audit."

True, you don't need to know all of these things if you're a songwriter, recording artist, manager, agent, record executive, film/TV production professional, or advertising agency executive. But the more you know the better. Not only will you be more comfortable with the business side of the music business, you'll be in a better position to guide a career -- your own or your clients'. Just knowing a little about these topics allows you to

follow the conversations these clearance guys have and any other representatives.

While some of those terms may not pertain to you. "BRT" refers to British Royal Territory. "Rear Window" refers to the U.S. Supreme Court decision in *Steward v. Abend* in 1990 which concerns songs created after 1978 which do not have a specific length of time noted in their license agreements. However, one term that is a good one to know, "MFN" (Most Favored Nations) which means every song is able to enjoy the same contractual arrangements in a project (if you and a competitor have songs licensed to a movie and they negotiate a higher fee, you will get that same higher fee).

Don Grierson, when acting as a music supervisor for motion pictures, says "Those who represent songs often call me and ask 'What are you looking for?' and it's amazing how rapidly the answer can change. The music requirements for any given project, or even any given scene in a film, can change depending on the director, the producer, etc. And whatever mood is being established in the scene may change in post-production, requiring a change in the music."

Mistakes to Avoid

Where people are involved, there can be errors. Publishing and record companies sell and sublease and assign rights, some of which they did not own to begin with all the time. In addition, new companies file new cue sheets and suddenly a song is attributed to the wrong writer, a title is changed, a publisher forgotten; or sometimes a copyright holder just stops filing all paperwork, including change of address forms.

Being an indie artist can be a huge advantage. Music supervisors are always looking for quality master recordings. An indie artist can sign off on a master and synch music license in one phone call. Time is always an issue, and TV supervisors love indie artists because of the lack of major label red tape which can leave them without clearance in time.

The Bottom Line

Like any part of the music business, licensing can be feast or famine, goldmine or plain old shaft -- but like any part of any business, the best protection resides in employing those with experience and integrity. If I were looking for a goldmine, I'd find an experienced miner who had found gold before.

CHAPTER 4

MUSIC LICENSING PEOPLE

Arranger (aka Orchestrator)

Not to be confused with the composer, although composers often arrange their own music—especially anyone whose name isn't John Williams or an equally A-list composer (they're the ones who can afford to have their nails buffed while the Arranger weaves their magic). An Arranger takes the composition and decides what instrument will play what and adjusts the music for the type and/or size of the band or orchestra that will be performing and/or recording it. Sometimes arrangers take a huge orchestra score and trim it down for a smaller group, or will take a classical piece and arrange it for a rock band, pop artist or dance track (think “Fifth of Beethoven” as an example).

Contractor (aka Music Contractor, Vocal Contractor or Fixer)

These folks hire the instrumentalists and/or vocalists needed on a session and know the skilled, professional people in their town who work well together, won't waste anyone's time and will produce great results on time and on budget—every time. Sometimes the production company will designate a Contractor, but more often they work with the composer (who often just tells them “Get me the best you can for the money we have”) and they also liaise with the music coordinator or whoever is setting up the studio time, location, etc. The Contractor notes how many minutes of music are recorded and/or how many tracks are recorded. For union sessions, the Contractor helps to handle the A F of M (Musicians Union), SAG and/or AFTRA paperwork and forms for filing with the respective union(s). They make sure that during the session the performers get proper break times, meals, etc. and oversee the full recording process. The Contractor may also be one of the performers during the session, and is in charge of making sure all the performers get paid the right amount of

money and in a timely fashion (according to union rules, if applicable). Cash is good, but more often than not, expect a check in the mail, especially on a union gig.

Engineer (aka Scoring Mixer)

A great Engineer is a composer's best friend—really! They record and mix the music, and oversee all the technical aspects of the recording session. The great ones are also often musicians themselves, who have that creative ear as well as the technical prowess necessary for a successful session. Composers often have favorite Engineers and will request them on a project. Sometimes the production company will ignore the composer and assign an Engineer—it often depends on budget, but sometimes an “I want to be in control of everything” person can enter into the process from either the creative or business end. As such, an Engineer often has to be a highly-skilled mediator who speaks all the languages: composer, director, classical instrumentalist, Rock God and singer—and even suit! The good ones are also up-to-date on all the current technology and how it can help in the specific session at hand, and will work closely with composer and score supervisor to make everything run smoothly, efficiently and quickly, without sacrificing quality or anyone's sanity.

Music Administrator

Ostensibly, their duties should be to handle all the paperwork for the music supervisor and/or coordinator. In reality, they often have to handle a lot of the duties most often associated with being a supervisor and/or coordinator because of budget, time or personnel constraints. They may not be in the room as negotiations are in process, but after that meeting, you can bet that they're the one who actually types up the contract!

Music Coordinator

This differs greatly, depending on whether they're on staff with a TV network or a full-service music company or an independent person who works with specific music supervisors. The Music Coordinator's duties can

be as simple as creating and filing cue sheets for the project and making sure all the dollars and cents add up at the end of the day, or may be as complex as working hand-in-hand with the music supervisor on all aspects of the project. Sometimes, if there is no supervisor, the Coordinator will work with the director and assume many of the duties a supervisor would normally handle. A Music Coordinator's primary functions are normally to make sure the music the supervisor is suggesting for particular scenes is properly catalogued and delivered to the director, film editor and/or music editor (as directed), and all credit information (songwriters, artists, labels, etc.) is readily available. They are also responsible for coordinating the compilation of all information for cue sheet preparation, and may actually prepare the final cue sheets, based on the composer and music editor's notes from the final mix of the film. Basically, the budget often dictates their duties.

Music Copyist (aka Copier, Music Preparer or Music Prep)

The Music Copyist ("Copier") prepares the printed music charts and/or lead sheets the musicians use at a recording session. These are extracted from the overall music score the composer provides so that everyone is looking only at the part they play, and have their music in the right key for their instrument (kind of important). In the past (as those of us who had the stained fingers to prove it), such music charts were done by hand, with India ink (so the notes wouldn't bleed off the page when the trombonist emptied his spit valve), and done one-by-one in a rather time-consuming and painstaking process. Today, with the advent of some great scoring software, those who prepare music for sessions most often will do it via the computer.

Music Editor

The Music Editor, along with the composer (and sometimes the music supervisor and/or coordinator) organizes, documents, and times all the music cues used in a project. (S)he is the obsessive, retentive type and will often drive the director crazy with almost indistinguishable cuts in/out

of a piece of music, but that's why we love them. They will often make suggestions as to the best start/stop points, and can make a song “fit” into the scene, dodging dialogue and enhancing poignant moments by “cutting and pasting” a song. They also work with the composer on timing, length, type and placement of music that the director, composer and music supervisor have discussed during spotting sessions. If the music is being recorded live (not a Synth Score), the Music Editor will often be at recording sessions to document, time and name each cue, and will often generate the click used to keep everything exact. The Music Editor also cuts all music (source, score or source) into the film—although here is where the director and/or producer may return the “(s)he’s driving me crazy” favor. The music editor also notes the correct SMPTE Time Codes for the cue’s in/out placement and provides that info to the music supervisor, coordinator and/or administrator so that official cue sheets can be prepared for filing with the respective performance rights organizations (PROs).

Music Supervisor

Regardless of whether they’re a “biggie” (meaning “I have a staff”) or an “indie” (“I get to do it all for less money”), the Music Supervisor’s main duty is in choosing music and licensing it for the project, and—as importantly—making sure the music they provide to the director enhances the action/mood on screen, and helps the director see his/her artistic vision realized. The Music Supervisor oversees all of the creative and business aspects of the music for a project. This includes helping to develop a music budget, assisting in the search for a composer (if requested), helping the director in his/her choice of songs, coordinating the soundtrack recording, “spotting sessions” (with composer & director), etc. It may or may not include doing the music clearance/music licensing paperwork, and can also include some (or all) of the duties of a music coordinator and/or music administrator. The earlier the Music Supervisor is involved, the more time they have to be creative—both with the music itself and with the budget. When a “famous” song, or a “classic copyright”

is desired by a director, but the project's budget does not allow for its use, the Supervisor will suggest (and often negotiate) budget-friendly alternatives from various sources, including independent artists and/or music libraries.

Orchestrator (SEE: Arranger)

Sound Designer

This is the person who creates the soundscape and designs the non-musical sounds for a project. While not particularly common in the past, but growing in popularity because of “synth scores” being used due to budget constraints, the composer may sometimes help create the non-musical sounds (i.e., swooshy Sci-Fi sounds, “blow ‘em up good” noises, gunfire and/or just plain weird stuff) that go along with the music, or are used on a stand-alone basis. The composer may also work along with the Sound Designer in designing/creating sounds to be used as overlays to the music.

Score Supervisor

During the recording session for a film or TV program, the Score Supervisor hangs out in the control room with the music engineer, music editor and whoever else wants the free food that the string section and electric bass player always manage to find before anyone else. The Score Supervisor makes suggestions and comments to the conductor (often the composer) as the music is being recorded. The composer/conductor may not want to have to trek back and forth from the studio into the booth to listen to playback, and the Score Supervisor can give them fast feedback on what's working and what is not (although the suggestion, “no you shouldn't have hired any viola players” may be too late [just kidding]).

CHAPTER 5

MUSIC LICENSING USES

Background Instrumental

A term used in cue sheet preparation that describes the underscore, non-visual or off-camera INSTRUMENTAL source, such as music playing on a radio, etc.

Background Vocal

A term used in cue sheet preparation that describes a vocal, non-visual or off camera VOCAL source, such as a song (with lyrics/words) playing on the radio or jukebox in the background. Even if noted as a background vocal on a cue sheet, a writer/publisher's PRO may often bump up the cue to "Feature" status merely because there are lyrics set to the music. As such, they can be paid at a higher back-end performance royalty rate than a background instrumental cue, regardless of how the music is used.

Bumpers

These are the short pieces of music you hear before/after commercials as we come "back to the show!" Game shows use these a lot—and not just at commercial breaks, but to emphasize various key points in the game. Short music cues in the midst of the action can also be referred to as Bumpers.

Closing Theme

A term used in cue sheet preparation noting the end title (Closing) Theme. This is most-often considered a featured use, since it is the primary focus of the scene/end credits.

Corporate and/or Industrials

Commercials & Advertising are self-explanatory, but an “Industrial” can be anything from a national sales meeting for a company to a live show for potential clients. Music can be pre-recorded or done live—or a combination of both. Whether it’s music for a film or launching a product line, the knowledge and skills required to license or create songs are the same. Music can add excitement to a movie car chase or to a commercial, highlight dialogue between actors or help a CEO in a national presentation to the stockholders. Music has always been a prominent feature in advertising and commercials, but today has become even more prevalent, with commercials often being referred to as “the new radio.” Music can be custom-created for an ad campaign, or a “famous” song can be licensed. So whether it’s a string of commercials touting the newest television show, or custom-created music to motivate the corporate sales force, the principles are the same.

Ephemeral Use

This came into being during the infancy of live television. Sometimes a guest on the early live talk shows would break out into song unexpectedly, and the producers didn’t want to be liable for licensing those works. Since the only recordings being made were for archival purposes (not for re-broadcast), the ephemeral use was born. Certain live TV programs require no licenses because there is no reproduction of the program for future broadcast. This may include news broadcasts, sporting events, telethons, awards shows, etc. or where only one copy of a particular program is made specifically and solely for the purpose of broadcast (“videotape exception”)—such as late-night talk shows or local TV shows. Any reruns, DO, however, require a license. The very fact that they are broadcast again means that they were recorded so that they could be reproduced. As such, reruns & DVD/video compilations, specials and/or clip shows are outside the scope of this exception. ALL Ephemeral Uses are recorded on cue sheets and filed with the respective PROs (the same way it’s done for

every other type of film or TV use). Make sure your agreement includes a delivery date for cue sheets!

Featured Instrumental

This term is rarely used anymore however, it is/was a cue sheet term where an instrumental cue is featured in some specific way other than visual. PROs most often will consider any instrumental cue/score as “background” regardless of its featured use (such as in a montage, etc.). Be very careful when using this category, and don’t be surprised if it gets bumped to a “background instrumental” use.

Featured Vocal

A term used in cue sheet preparation to describe music with a vocal (a song) that plays during a visual montage or other important scene. This is most-often considered a “featured” use since it is the prime focus of the scene.

In Context Use

A term used in music licensing to note that the music can only be used IN Context—in the specific scene for which it is being licensed (generally including trailers in which the scene is used), and not in any other scene or out-of-context use in any advertisements (including film trailers).

Linear Use

A Linear Use is when the music being licensed is being used in a specific manner without manipulation—which includes moving verses around, or taking out a horn section, etc. Film and TV uses are most often linear; video games vary.

Non Linear

A Non-Linear use is when the user may manipulate the music—such as extracting the guitar part or moving verses around, etc. This is the option

most often requested in multimedia licenses, especially for video games, Karaoke, etc.

Opening Theme

A term used in cue sheet preparation that means the film/program's opening title theme. This is most-often considered a featured use, since it is generally the prime focus of the opening scene.

Out of Context Use

A term used in music licensing to note that the music can be used not only IN Context during a specific scene, but may also be used in a film trailer and/or advertisement, whether or not the trailer uses the scene for which the music was originally licensed.

Source Music (aka Source)

A mix of the words "score" and "source," this is music that is treated like score music on screen, but is licensed in the fashion which source music is licensed. Indie filmmakers, who often have already maxed out their credit cards to make their film may not be able to afford a score composer, but CAN afford a few music cues for their opening or end title, chase scene or seduction montage. Composers often have lots of that music sitting around gathering cyber dust, since it's rare that all the music they write for a film gets used. They still own that music and will often license it out to indie filmmakers.

Sidelining

This is when musicians appear on-screen. While they appear with their instruments, they may or may not be playing during the scene. Most often they're "playing" to a prerecorded track.

Source Music (aka Source Cue)

This is music the actor on-screen CAN hear—the music coming from the radio, a jukebox, in the club, at the party, etc.

Spotting Session

After a movie/TV program is filmed and during the editing phases of a project, the director, composer & music supervisor get together and come to a meeting of the minds on what types of music will be used, and where specific musical cues will occur (this is why SMPTE is so important—these codes are used to note the timing of the cues). The music coordinator, music editor or music supervisor makes all notes and provides them to everyone in the loop as the editing progresses. More than one Spotting Session may occur, especially if there are substantial changes made in the film edit.

Temp Track (aka Temp Music)

This is the bane of the music supervisor's existence. The director may have "pet" pieces of music on their compilation CD and/or very famous, very expensive pieces of music temporarily cut into a film or TV show before the actual music is composed and/or source cues are selected (and don't expect him/her to know who sang the songs or have any other clue as to where to find the rights holders). This can also be a problem for the composer, because the director may be so enamored of that A-list composer's music that nothing will ever compare in his/her eyes. If you—the composer and/or music supervisor—can talk the director/producer into using music YOU provide for the Temp Track, you're more likely to avoid the dreaded "Temp Love".

ADDITIONAL TERMINOLOGY

Music Breakdown

While this can happen at the rough cut stage of a film, ideally the music supervisor is brought on before shooting, at which time they'll read the script and note every place where music would be appropriate (i.e., club scene, romantic montage, car radio, etc.). This does NOT take the place of a spotting session (although it may include some ideas for where the bigger score pieces might work), but is merely a heads-up for the director with a ballpark idea of how many source cues might be needed and, perhaps, a rough budget. The supervisor will note the scene, type of music—or even a song title/artist if they have a specific song/recording in mind. They'll also note how the music will be used (visual vocal—such as the band playing as everyone screams “Rock on!”—or on the radio or whatever).

Prerecord

Sometimes the music needs to be recorded BEFORE a scene is shot (hence the term, “Prerecord”). This is necessary when an actor is singing or playing an instrument (or pretending to do so), but is also used for scenes in which people are dancing to music that must be perfectly synchronized with the action (such as a ballet, or even a party dance scene).

Ringtone

Used in a mobile phone, pager or other portable communications device, a Ringtone is an excerpt (hopefully short & not annoying to everyone else in the coffee shop ☹) of a song/composition in a digital file that is rendered into audio form. The ringtone is played when a call, message and/or alert is received by the phone, etc.

Ringtones generally come in two basic forms: (1) Pre-Recorded Ringtones that play real audio clips from sound recordings, and (2) Phonic Ringtones,

which are most often monophonic, standard MIDI sound files (made using single notes) or in polyphonic form (multiple notes that are played simultaneously, creating harmony, chords and/or counterpoint).

Timing Notes (aka Breakdown Notes)

The music editor makes notes that detail events, timing, etc. for scenes and supplies them to the composer, who will use them to reference time code & duration of scenes (it's kinda nice to know how many seconds/minutes of music you're gonna need to churn out before deadline). These Notes will often contain not only the timing and key action/dialogue, but the camera moves & edits as well.

Visual Dance

A term used in cue sheet preparation, meaning an on-camera Dance. This is most-often considered a featured use, especially if the Dance is the prime focus of the scene.

Visual Instrumental

A term used in cue sheet preparation meaning an on-camera Instrumental performance. This is most-often considered a featured use, especially if it is the prime focus of the scene.

Visual Vocal

A term used in cue sheet preparation meaning an on-camera Vocal performance. This is most-often considered a featured use, especially if it is the prime focus of the scene.

CHAPTER 6

Copyright, Publishing & Licensing – Terminology and Definitions:

A&R (Artist & Repertoire)

The person or group of people who discover, sign and develop acts for a record label. (They used to select material from publishers for artists signed to their label, hence Artists and Repertoire.)

Acoustic Fingerprinting

(SEE: Fingerprinting)

ADI

ADI or Area of Dominant Influence is the geographic area or market reached by a radio or television station. It is used by advertisers and rating companies to determine the potential audience of a station.

All In

Composer: “All In” for a Composer means that they will deliver the score in final format to the producer for one, all-in fee. That means they will usually be doing a “synth score” where all the music is recorded via digital means, using instrument samples, etc. If they need to use a live guitar or sax player (or whatever), they have to pay the player from their own pocket.

Songwriter: “All In” means BOTH the master use and synchronization fees are combined into one “all in” fee for licensing the song.

Assignment of Copyright

This is the transfer of ownership of a copyright from one party to another, which must be in writing to be effective.

Audio/Visual Work

Standard industry term for film, television or any other visual production.

Author

The creator of "Intellectual Property" such as literary, musical and dramatic works; choreography; pictorial, graphic and sculptural works; audio/visual works and sound recordings. Generally the word author can denote composer, lyricist, record producer, choreographer, artist, photographer, writer or other creator (see "Work for Hire").

Background Music

Music used (other than as feature or theme music) that creates mood and supports the spoken dialogue of a radio program or visual action of an audio/visual work.

Blanket License

"Blanket license" is a license which allows the music user to synch the music as much or as little as they like for the duration of the term. Licensees generally pay an annual fee for the license. The blanket license saves music users the paperwork, trouble and expense of finding and negotiating licenses with all of the copyright owners of the works that might be used during a year and helps prevent the user from even inadvertently infringing on any copyrights.

Broadcast

The replaying of pre-recorded works to multiple listeners through various media or in a 'semi live' setting such as a bar or bookstore. This also includes radio, TV, web casting, pod casting, etc.

Clearance (Copyright)

For the right to use music in most circumstances it must be cleared with the copyright owners. Clearance is needed for copying, not just for commercial use. It is normally negotiated through licensing directly with labels and publishers or other copyright holders.

Collection Societies (BMI, ASCAP, SEASAC)

These are organizations that issue licenses to music users and share the license fees among copyright owners which are normally the record labels, publishers, writers and performers. See also Performing Rights Organizations.

Control

Control means the publisher (see Music Publisher) has the right to negotiate and execute all licenses for the "life of copyright" which according to U.S. copyright law is the length of the copyright owner's life plus 70 years after his/her decease. The publisher licenses mechanical, print, synch and performance rights on behalf of any of its rightful co-writers and/or co-producers and itself. Any licensing fees or other royalties are collected by the publisher (the owner of the copyright) on behalf of itself and distributed to any co-writers, co-producers or other co-owners of the music.

Copyright

This is the legal right to own or control the exclusive publication, production, sale or distribution of a literary or artistic work. Copyright is granted by law in most countries and in the United States by a federal statute called The Copyright Act of 1976.

Copyright Arbitration Royalty Panels (CARP)

As successors to the Copyright Royalty Tribunal, CARPs will consist of private citizens appointed by the Register of Copyrights to act as

arbitrators in matters of setting periodic changes in the royalty rate for the compulsory mechanical license, as well as for compulsory licenses for distant signal cable television transmissions and public broadcasting. CARPs will also determine entitlements to the royalties received by the Copyright Office for the latter two licenses and under the Audio Home Recording Act.

Cover Songs

In popular music, a cover version, or simply cover, is a new performance or recording of a contemporary or previously recorded commercially released song or popular song. Originally, Billboard and other magazines which track the popularity of the musical artists and hit tunes, measured the sales success of the published tune, not just recordings of it. Later they tracked the airplay that songs achieved for which some cover versions are the more successful recordings of the particular songs. For complete details with related discussion and references, follow this link to an in-depth Wikipedia article about cover songs.

Cue Sheet

If a composer, songwriter or publisher wants to be a part of the Money-by-Mail Club they need to keep an eagle eye on the Cue Sheet and when/where it's filed. It is the document that lets their PRO know (BMI, ASCAP, PRS, SESAC, SOCAN, GEMA, etc.) that money is due them for use of their music in a project. EVERY time a film or TV show is completed, a Cue Sheet is prepared that specifies who wrote and published each piece of music, who owns what percentage, the respective PROs and exactly how long and in what fashion the music was used. The most important thing about a Cue Sheet (assuming the writers and publishers want to get paid) is to file it with every PRO whose writers and/or publishers appear on it. The music supervisor, coordinator and/or administrator usually prepares the Cue Sheet based on information provided by the music editor and composer, and the production company or network is generally responsible for filing them with the PROs. Ideally, Cue Sheets should be

filed within ninety (90) days of the FIRST airing/showing of the TV program/film, but there is no hard and fast rule or requirement by the PROs—other than “in a timely manner” (which can sometimes mean up to a year!). NO WRITER OR PUBLISHER GETS PAID THEIR PERFORMANCE ROYALTIES UNLESS THE CUE SHEET IS FILED WITH THEIR PRO! This means that writers and publishers (or their administrators) should always request a copy of the Cue Sheet for any project in which their music is used, and specify a date by which they must be delivered within the body of the music licenses (master & sync).

Dramatic or Grand Rights or Dramatic Performance

While the line between dramatic and non-dramatic is becoming less clear and depends on the facts, a dramatic performance usually involves using the work to tell a story or as part of a story or plot. Dramatic performances, among others, include:

Performance of an entire "dramatico-musical work." For example a performance of the musical play Oklahoma would be a dramatic performance.

Performance of one or more musical compositions from a "dramatico-musical work" accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken. For example, a performance of "People Will Say We're In Love" from Oklahoma with costumes, sets or props or dialogue from the show would be dramatic.

Performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action or visual representation. For example, incorporating a performance of "If I Loved You" into a story or plot would be a dramatic performance of the song.

Performance of a concert version of a "dramatico-musical work." For example, a performance of all the songs in Oklahoma even without costumes or sets would be a dramatic performances.

The term "dramatico-musical work" includes, but is not limited to, a musical comedy, opera, play with music, revue or ballet.

Common "non-dramatic" public performance licenses include recordings broadcast on radio, songs or background music performed as part of a movie or other television program, or live or recorded performances in a bar or restaurant.

Dramatic and grand rights are generally licensed by the composer or the publisher of the work.

Exploitation

In music publishing, songs which are "exploited" create revenue streams which are the result of the publisher executing licenses and filing the proper registrations.

Film Music

Music and recordings for film can be licensed from publishers and record labels. Unlike licenses for normal broadcasting or performance, rates for these master use and sync licenses are not fixed, so film (video, advertising, etc.) makers negotiate a price. Library and catalogue music providers offer ready-made, pre-cleared recordings for a wide range of video (and other) applications.

Fingerprinting

(aka Acoustic Fingerprinting and NOT to be confused with Watermarking)

An acoustic fingerprint identifies audio samples and matches the signal to similar files in a database. It is a digital summary (condensed/compressed) generated from the audio signal, and can help identify songs, sound effects, videos, ads, etc. and can monitor the use of

such works played on radio, included in P2P networks, etc. A good acoustic fingerprint can identify specific master recordings even after they have been compressed (i.e., into .mp3 files), and should be able to identify any specific master by the same band (i.e., the “live concert” version vs. the studio version of the artist’s #1 hit song). The downside is that acoustic fingerprints are very sensitive to any changes in the data, meaning that if dialogue or sound effects interfere with the fingerprinted audio, it can muddy the waters in identifying the song/composition and/or recording of it. This is not the tech a film/TV composer will find particularly helpful in tracking their music used in movies, advertisements (radio and otherwise) and/or television programs, since virtually all product in those arenas has dialogue, sound effects and/or other sound elements that can get in the way of identifying the fingerprinted audio file. Think of it as a smudged up human fingerprint—you might be able to sort of identify it, but not necessarily to a reliable degree if it isn’t a perfect impression.

Ghostwriter

Ever wonder how that composer manages to spew out three hours of music per week for all the TV shows he/she is doing, and still has time to write the entire score for that new blockbuster? Chances are, he/she is NOT, and no, human cloning didn’t sneak its way into the music biz. That’s where the struggling composer who is begging to be let in the door comes in. He/she writes music for another composer, but receives no cue sheet or any other credit for composing the music. The Ghostwriter is an invisible music elf who makes cues magically appear for the credited composer, who then pays the Ghostwriter a flat buy-out fee, takes credit for writing the music and appears as the sole writer on the cue sheets. In some instances the Ghostwriter is not even allowed to tell anyone that he/she wrote any music for the film/TV program his/her creation appeared.

Independent (Indie)

Independent normally means record labels that are not "majors" or artists that are not signed with a major publisher or label.

In Perpetuity

Basically, this means forever. In publishing, it means that whoever owns the publishing rights to a song will own it for the full life of the copyright (not just the life of the composer). In music licensing, it means that whoever owns the rights to the project (filmmaker, production company, TV network, etc.) is given contractual rights to have a song/composition and/or specific recording of it embedded into the project forever. If a publishing company, record label or film company is sold to another entity/corporation, all contracted rights follow the song and recording to the new company(ies).

Invisible Watermarking (SEE: Watermarking)

Lead Sheet

A hand-made reproduction on paper of a newly-written song.

Library

A collection of musical compositions that are licensed by the publisher or administrator for use as background, theme, or score music, on radio, broadcast and cable television, films, or video productions.

License

The right, granted by the copyright holder, for a given person or entity to broadcast, recreate, perform, or listen to a recorded copy of a copyrighted work. See also Mechanical Rights, Performance Rights Sync Rights and Print Rights Licensing.

Licensors

The owner of the licensed work

Licensee

The person or entity to whom the work is licensed

Licensing

There are several primary rights that music publishers use to license the use of their music. They are Mechanical, Performing, Sound Recordings, Synch and Print Rights.

Mechanical Rights

A mechanical right is the right to record and distribute (without visual images) a song on a record for private use. Mechanical rights or a mechanical license must be obtained in order to lawfully make and distribute records, CD's and tapes. Recording rights for most music publishers can be obtained from

The Harry Fox Agency
205 East 42nd Street
New York, New York 10017
212-370-5330
<http://www.harryfox.com/>

Music License

(See License), Mechanical Rights, Performance Rights, Sync Rights and Print Rights Licensing.

Music Publisher

A Music Publisher works with songwriters & composers to promote and market the writers' songs/compositions. They pitch the material to the folks who use music (movie/TV producers, record labels, video games,

etc.). In return (and PLEASE NOTE: The Publisher will own this for the LIFE of the song/composition's copyright—otherwise known as “in perpetuity” —as in FOREVER), the Publisher takes a percentage of the publishing half of a song (up to 100%). Publishers license the right to use the song (not to be confused with the recording of the song/composition), collect fees for the usage and split them with the songwriter/composer according to each writer's contract terms.

Per Program License

A "per program" license is similar to the blanket license in that it authorizes a radio or television broadcaster to use the works. However, the license is designed to cover use of music in a specific radio or television programs, requiring that the user keep track of all music used.

** Also, the user must be certain to obtain rights for all the music used in programs not covered by the license.

Performing Rights Organizations

To receive performance royalties one must be a songwriter, composer and/or publisher signed up with one of the many Performing Rights Organizations (PROs) throughout the world. These royalties are collected by the PROs (BMI, ASCAP, SESAC, SOCAN, PRS, etc.) for the public performance of music (TV, films, restaurants, foreign movie theatres, etc.), calculated and paid based on various PRO computations, factors and variables, such as the network on which the program is aired, the country in which a film is screened, number of minutes of music used, etc. Your PRO is at least partially (sometimes solely) determined by the country in which you are a citizen.

Production Music

See Film Music.

Public Domain (aka PD)

A song is in the Public Domain when it never has been, or is no longer owned by a publishing company. This applies to many old folk songs (but not all), older “classical” music (such as works by Mozart, Bach & Beethoven) and/or when enough time has passed since the composer’s death to classify the work as in the Public Domain. PD music can be recorded without negotiation or payment to a publisher, since there are no rights to negotiate because there is no ownership. RECORDINGS of PD music cannot be used without the permission of the owner of the recording (unless the recording itself has also passed into PD, and virtually NO U.S. recordings are in PD). DO NOT EVER assume that a song is in the public domain. A song can be PD in the US, but not in the UK, and virtually every music license’s territory is “worldwide” (some get freaky and want the Universe—maybe for “K-FLY, your ‘fly in the sky’ for all you groovy space station listeners” perhaps?). When licensing music, ALWAYS verify that the song is PD worldwide before plunking it into the project.

Public Performance or Performance Rights

A public performance is one that occurs "in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." A public performance also occurs when the performance is transmitted by means of any device or process (for example, via broadcast, telephone wire, or other means) to the public. In order to perform a copyrighted work publicly, the user must obtain performance rights from the copyright owner or his representative.

Publisher's Share

When publishers acquire (purchase) a copyright, they are acquiring the publisher's share. Depending on the agreement, this is the share of the song ownership that can be bought, sold or sub-licensed. (see Sub-

Publishing) The writer's share always stays with the original author of the song or musical composition.

Publishing Administration

Publishing administration is limited to royalty collection. The publisher will not get additional customers for the compositions. The rate for administration is normally about 10%.

Record Label

A record label (or record company) makes, distributes and markets sound recordings (CD's, tapes, etc.) Record labels obtain from music publishers the right to record and distribute songs and in turn pay license fees for the recordings.

Registration

You or your music publisher registers your songs with a performing rights organization (ASCAP, BMI or SESAC) to get the song details in their database so the correct percentages of performance royalties can be attributed and paid to the correct party.

Your music publisher registers your songs with a 'local' publisher in a foreign territory so they can, in turn, register the songs with their local mechanical and performing rights societies (mechanical and performing rights organizations) so the correct percentages of foreign mechanical royalties and the publishers side of performance royalties are attributed and paid to the correct party.

Retransmission

A transmission of a performance is one that is sent by any device or process (for example, radio, TV, cable, satellite, telephone) and received in a different place. A retransmission is a further transmission of that performance to yet another place.

Royalties

Royalties are fees paid to rights owners (normally record labels, publishers, writers and performers) for the use of their work. Royalty collections provide ongoing earnings of licensed songs from each sale or broadcast.

SACD

This is a very high quality audio format that provides a realistic sound experience using Direct Stream Digital (DSD) and a 4.7GB disc with 2.8 MHz. It is similar (in concept, at least) to a regular CD, but includes an additional high-density layer.

There are currently three disc configurations, the first two which contain only the DSD data and can be played only on special SACD players: (1) Single-Layer SACD [holds 4.7 GB of data and has one DSD layer] and (2) Dual-Layer SACD [with two DSD layers, so it can contain twice as much data]. The third type is a Hybrid SACD that has one DSD layer of 4.7 GB and a conventional CD layer, allowing the disc to be played on both a regular CD Player and a SACD player.

Sampling

Sampling or sample licensing requires record label and publishing clearance. There is no fixed rate for clearance so licensing costs can be negotiated with the publishers.

Score Music (aka Score)

This is music the actor on screen DOESN'T hear—the music the composer creates to let the audience know that the monster is coming, the damsel is in distress, the good guy is hunting down the bad guy or the two lovers are sad they've parted. This music is NOT licensed the way source music is licensed, but is most often done as a “work for hire” by the composer for the film/TV production company. A “work for hire” (aka “work made for

hire”) means that whoever hired the composer to write the music owns the publishing of that music and the recording the composers makes of it. In today’s indie film market, however, the composer may often accept a lesser up-front fee (or even do it on spec or for no up-front money) and in return, gets to keep 50-100% of their publishing & masters, rather than handing any/all of it over to the production company.

SMPTE Code (aka Time Code)

SMPTE is an acronym for The Society of Motion Picture and Television Engineers. It usually refers to a standardized time code that SMPTE developed. SMPTE is a recorded audio signal that is shown in a window on the screen to reference where you’re at in the program/film (e.g., 02:01:22:14 refers to a time code location of “two hours, one minute, twenty-two seconds, and 14 frames”). SMPTE comes in several types (including Drop Frame & Non-Drop Time Code).

Sound Recording

A sound recording refers to the copyright in a recording as distinguished from the copyright in a song. The copyright in the song encompasses the words and music and is owned by the songwriter or music publisher. The sound recording is the result of recording music, words or other sounds onto a tape, record, CD, etc. The copyright encompasses what you hear: the artist singing, the musicians playing, the entire production). The sound recording copyright is owned by the record label. The copyright in the musical work itself is owned by the music publisher, which grants the record label a “mechanical” license to record and distribute the song as part of the record.

Sub-Publishing

A contractual arrangement between a primary publisher of a song and a secondary or co-publisher to handle the exploitation, licensing and collection for the song in, for example, a specialty, private label or foreign territory market.

Sync Rights

See synchronization licensing.

Synchronization Licensing or "Synch" Rights

Synchronization (or sync) license is the licensed right for a film or other audiovisual medium to use music to synchronize (match) to recorded images in an audio-visual product. It can be a commercial, video game, film, TV show, music video, DVD or website, etc. A synch license usually produces a negotiated fee for certain rights depending on the usage. Synchronization rights are licensed by the music publisher to film and video producers, ad agencies or other program or product producers.

Watermarking (aka Invisible Watermarking)

(Not to be confused with Fingerprinting)

Long ago, in attempts to combat counterfeiting and assist in identifying the validity or source of a communication, indelible images and/or patterns were imprinted on paper (such as those used in printing money, bank notes, postage stamps, passports, stationery, etc.). Modern, electronic, invisible watermarking used in audio applications applies the same concept, but the content is altered in such a way that a machine can recover the data that cannot be heard by human ears (the same goes for DVDs, but it's both audio and video that is watermarked). Whenever the audio/visual is copied, so is the identifying information imbedded in it. While invisible watermarking is not audible to the human ear (nor can it be detected with the naked eye), the source of an audio signal can be traced electronically to its owner via the embedded digital signals. There can be more than one watermark embedded in a file—often many, so that the bulk of the file (not just the beginning or end) is marked with unique codes. If the watermark is “robust” it means that regardless of what noise maybe over or under it, the embedded information can be detected—i.e., music that is watermarked can be identified even when dialogue and/or sound effects in the film or TV program try to drown it out, or when the DJ

won't shut up as the song plays on the radio. This technology is also used to prevent unauthorized/illegal copying of DVDs, CDs and various sound file formats. When attempting to make a copy, the copying devices will allow or not allow the copy based on the content of the watermark(s) on the original source. From a musical tracking standpoint, this is superior technology to that of fingerprinting.

Work for Hire

As defined in Section 101 of the 1976 Copyright Law, this is a work prepared by an employee within the scope of his/her employment, or a work specially ordered or commissioned for use by another person in accordance with a written document as a contribution to a collective work, motion picture, audio/visual and other certain types of works, the nature of which is specifically defined in Section 101 of the Copyright Law. In the case of a work made for hire the employer is considered the author of the work under the Copyright Law (and unless the parties agree otherwise, owns all the rights in the work).

Writer's Share

The writer's share represents the authorship of the song. While a copyright can change ownership many times; the writer's share remains the property of the author. See Copyright for more details.