

Music Licensing

Philadelphia Volunteer Lawyers for the Arts
A program of the Arts & Business Council of Greater Philadelphia



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By *Shannon Petty*

Why do I need a license?

A number of exclusive rights are associated with copyrighted works. These rights are designed to reward the artist and protect the work. A copyright holder may keep or sell all, some, or none of the rights associated with copyright at his or her discretion. Using a work without permission violates these exclusive rights and is known as copyright infringement. Copyright holders are often willing to “lend” various rights associated with a work to others. This is called licensing. Music licensing allows the use of another’s copyrighted work in videos, films, other sound recordings, and for use in public places.

What type of music license do I need?

A variety of music licenses exist and are obtainable from different sources. Below are brief definitions of varying music licenses.

• Mechanical License

The licensing of musical compositions protected by copyright, for use in CDs, records, tapes, and similar audio-only formats. Mechanical licenses provide the copyright holder the ability to choose the first distributor of a mechanical recording. Compulsory licenses are issued after distribution of the first mechanical license. They permit anyone to make or “cover” mechanical recordings for a statutory fee if you cannot obtain permission from the copyright holder. Compulsory licenses do have certain restrictions, however, and are not a blanket waiver to obtaining permission from the copyright holder. If a user wishes to use a sound recording in its exact form through a compulsory license, the sound recording must meet two requirements to avoid possible infringement: (1) the original sound recording must be lawfully fixed and (2) the copyright owner of the sound recording must authorize use by the licensee. If one can’t obtain permission to use the sound recording, he can only re-record the work with his own musicians, singers, and so on. For example, if you wish to use Jimi Hendrix’s “All Along the Watchtower” in your project, you may obtain a compulsory license for your project as the song has already been mechanically licensed to others.

If you are unable to obtain permission from the copyright holder, you may only re-record or “cover” the song with your own musicians while paying a set fee. You may not use a copy of the Hendrix recording.

• Synchronization License

A grant from a music publisher permitting a producer of a visual work to music as an accompaniment. “Synch” licenses are required for videos, motion pictures, television, commercials, and other visual formats combining musical works with visual ones. However, synch licenses alone do not permit a producer to use the original version of a song. They authorize music recording in conjunction with an audiovisual work only, not a performance of that musical work. If you want to use “RESPECT” in a karaoke capacity for example, you may get a synch license and rerecord the song yourself. But if you want to use “RESPECT” by Aretha Franklin, you may need an accompanying master license, which is defined below.

• Performance License

This license allows one to perform a musical work publicly. Since performance licenses are an important source of revenue for artists, performance violations are policed by performing rights societies such as ASCAP, BMI, and SESAC (detailed in another PVLA informational pamphlet). This license is often used in conjunction with a synch license. For example, a TV broadcast must obtain both a performance license and a synch license (defined above).

• Master Recording License

A master license is granted most often by a record company in order to use an existing recording. This license is required for previously recorded material that you do not own or control. If you obtain a master license, always obtain a separate “synch” license with it. This should be distinguished from a performance license because it involves making copies or alterations to an original recording. Sampling frequently requires a master license.

• Blanket License

These licenses grant the right to perform all of the music represented by a performance rights organization, such as ASCAP. These licenses are both practical and valuable if your project requires a lot of music. Radio stations, which frequently use

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blanket licenses, would face great difficulty and expense in identifying the author of every song used by the station. Blanket licenses generally provide most of the rights provided by source, “synch”, and mechanical licenses, negating the need for multiple applications.

• Source License

Source licenses are obtained by going directly to the copyright holder, not a performance rights society acting on his or her behalf. Source licenses are an alternative to using large organizations like ASCAP and BMI. However, it is often more difficult to locate and contact individual copyright holders.

Who do I contact for a music license?

It depends. Music licenses are handled by various performance rights organizations such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC Inc., and the Harry Fox Agency. These groups represent songwriters, publishers, and their rights to be compensated for having various works performed in public. Which organization to contact depends on your planned use for the music.

ASCAP, BMI, and SESAC tailor licenses to individual industries — radio and television being two examples. These organizations enter into an agreement with each copyright holder which allows the organization to act as the copyright holder’s representative. The agency then has the power to enforce the copyright holder’s rights - to license the work, bring suit against infringing parties, monitor and distribute artistic royalties.

These organizations issue blanket and performance licenses, which grant the right to perform publically all of the music represented by the society. They generally do not handle master recording or mechanical licenses. Examples of businesses who license from ASCAP, BMI, and SESAC include television shows, radio, satellite and cable operators, hotels, web sites, stadiums, professional sports teams, colleges, and retail stores. Interested parties can access each organization’s inventory on their respective websites. (www.ascap.com, www.bmi.com, www.sesac.com)

The Harry Fox Agency is a mechanical licensing agency. They represent music publishers, issue licenses, and collect royalties for distribution. Interested parties can access Harry Fox’s licensing library to determine if they have the song

you desire. The website, www.harryfox.com, also guides you through the mechanical licensing application process which can be completed online.

If your goal is to obtain a master recording license, you will have to contact the appropriate record label directly. For additional information, visit the Recording Industry Association of America (www.riaa.com).

Oh No! The Song I Want Isn’t There!

If this happens, you can still try to contact the owner of the copyright directly to obtain a source license. Under copyright law, if a work has been previously licensed, the owner must then provide a compulsory license to future users. However, if the copyright owner refuses, or you can’t get in touch with the copyright owner, you can go to the Copyright Office and file a request for a compulsory license. You may want to get an attorney for this process, because it is long and complicated.

What if I want to license a “dramatic” work?

Dramatic works are musical plays, operas or ballet scores. Generally, performance rights societies do not license dramatic rights. If you are interested in licensing this type of work for your project, you will likely need to contact the creators directly. However, performance rights organizations do authorize non-dramatic performances of dramatic productions. For example, the ASCAP bar and nightclub license authorizes a piano bar performance of an individual song from a Broadway show.

I Still Have Questions—What Do I Do?

Licensing issues are tricky. If you still have questions after reviewing this material and contacting the agencies, then call Philadelphia Volunteer Lawyers for the Arts at (215) 790-3836 ext.1. The useful books section of our website also provides a link to many books and useful resources for artists and arts and cultural organizations. (<http://www.artsandbusinessphila.org/pvla/pvlabooks.asp>)

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Other titles in this series:

- Fair Use Guide
- An Artist’s Guide to Wills and Estates
- Finding a Live/Work Space for Artists
- Censorship, Obscenity, and Indecency
- Guide to Licensing Stock Photography
- Documentaries — A Sample Release Form
- Intellectual Property — An Artist’s Primer
- Transformative Works and Copyright for Visual Artists
- Music Licensing
- Nonprofit Incorporation
- Music Performing Rights Organizations
- Music Publishing — A Sample Contract between Composer and Publisher
- The Right to Publicity
- Parody and Satire
- A User-Friendly Guide to Copyright
- Financing your Film Project
- “The Naked Cowboy v. M&M” — An Explanation of Trademark Infringement
- The Visual Artists Rights Act of 1990
- Privacy and Photography
- Invasion of Privacy