

Using Music in Your Video Production

The music business has had many years to develop a system that offers consideration to the various relationships that arise. Songs are written by one person, performed by another, recorded by still another, made into recordings to sell by another and then made into music that can be included in a film or video soundtrack, printed on paper or then given to other musicians to perform and made into digital files and passed around cyberspace. It has gotten complicated. We'll try to unravel it -- this is no substitute for hiring an attorney who knows about this stuff or reading a good book on the subject but it is better than no information. We'll try to unravel it -- this is no substitute for hiring an attorney who knows about this or reading a good book on the subject but it is better than no information. FYI *Clearance & Copyright* (available at Powells or Amazon) by Michael Donaldson was written specifically for independent filmmakers. It was published in 1996 so it doesn't have all the new info in there, but it's otherwise quite good and understandable.

If you wish to perform a musical work, a license with [ASCAP](#), [BMI](#), or [SESAC](#) may cover your performance use. If you want to perform a song in a club or theater the club or theater the "venue" will have to get a license to have those performances to which the public is invited. The performer is safe.

If you want to make a record and distribute that musical composition that has already been recorded by someone else called a mechanical license you'll have to get permission to that. To synchronize music with visual images you'll have to check with [The Harry Fox Agency, Inc.](#) to get a license to do that.

With the Internet many of these licensing transactions are not complicated because you can get the license on line. Sometimes there are complications with creating a video for cable casting. The broadcast facility might have a license to broadcast the music you use but you won't have permission to sell the recording on the tape or play the tape elsewhere. Please check with your access station to make sure there is a license to broadcast the music.

The rules are similar to the use of images, including video. You must get permission (a license) to rebroadcast material. Most of the time it is not complicated to get permission to use material for programming but you must try. The attempt to get it right is the difference between a finding or a willful (large penalties) or an innocent (smaller penalties).

Fair Use is a defense to infringement, but a defense can mean you will have to spend many thousands of dollars defending yourself before you can make that plea to the court.

If you proceed without a license we could be talking about an infringing use. A use which violates the original owners exclusive right to decide where and how that work is used. Copyright infringement can expose you and your station to liability for up to \$150,000 plus costs and attorney fees for each infringement.

Online performances are also quite complicated. They involve 3 rights rather than just one: (1) the performance right in the musical composition (see ASCAP, BMI and SESAC above), (2) the performance right in the sound recording and (3) the right to duplicate the musical composition (see Harry Fox Agency, above). Each of these rights must be licensed from a separate entity. The above may be made less complicated by the fact that the owner of the sound recording is frequently the record label.

Ownership of the copyright in a particular piece can be discovered on the recording itself, or through a search of the licensing agency data base and also directly from the copyright office which now has an on line search capability.

The [Recording Industry Association of America](#) (RIAA) represents most major labels and has a good explanation of the statutory license available to certain Webcasters.

There is also a nonprofit educational radio station exemption that covers Webcasts of licensed radio broadcasts. If the statutory license or the nonprofit educational radio station exemption do not apply, you will have to get permission from each record label whose recordings you wish to Webcast. [MusicResearch Consultants'](#) web page contains links to publishers, record labels, music rights agencies, and more. This is a good place to gather contact information. If you know the name of an artist, album, song or label, the [All-Music Guide](#) allows you to search for more information and often links directly to the source.

You can avoid the above by choosing to use music that has been licensed for use by your access station or by using original music, involving and supporting local musicians. Many local bands will be happy to give you the opportunity to showcase their music on television. Bands can make great production partners.