

Are You
Taking
Notes ?



MUSIC RIGHTS 101



KINDS OF RIGHTS IN MUSIC

(1.) MUSICAL COMPOSITION

(2.) SOUND RECORDING



What is a Musical Composition?



WHAT IS A SOUND RECORDING?

- Roy Orbison's Oh Pretty Woman ★
- Van Halen's Oh Pretty Woman ★
- 2 Live Crew's Oh Pretty Woman ★

WHY DO THESE RIGHTS MATTER?



Dolla Dolla Bill, Yall.

The people who own the rights expect to get paid if you use their work. In many cases, if you want to use music, you have to pay the owner of the musical composition and the owner of the sound recording for the rights to use it.

So How Do I Get Rights?

Well, that depends. What do you want to do?

You need **separate** rights for each use:

- ❖ Combining music with video
- ❖ Broadcasting music
- ❖ Playing music in public
- ❖ Putting music on the internet
- ❖ Making copies of music
- ❖ Doing a cover

A CHART TO MAKE IT EASIER:

easy

If you want to:	Then you need:	From the Owner of the:		
		Musical Composition	Sound Recording	Lyrics
Put music in an ad or video or other audio-visual work	synchronization rights	✓	✓	
Make a physical copy of a song (like a CD or other tangible item)	a mechanical license	✓	✓	only if you reprint the lyrics, too, then need permission
Broadcast or play the music in a public place	to pay a fee	✓		
Play the music on the Internet or other digital media	to pay a fee	✓	✓ pay through sound exchange	
Cover a song	a compulsory license (or other permission)	✓		
Reprint the lyrics				✓

Music Rights Requirements

		Composition Holder			Sound Recording Holder			Artist	Other
		Mechanical	Sync	Public Performance	Mechanical	Sync	Public Performance	Publicity / Performance	DMCA
Audio	Over-the-air			Blanket				Need to Clear*	
Audio	Single song stream			Need to Clear			Need to Clear	Need to Clear*	
Audio	Multi song stream			Blanket			Blanket	Need to Clear*	Comply
Audio	Podcast/downloads	Need to Clear			Need to Clear			Need to Clear*	
Video	Podcast/downloads	Need to Clear	Need to Clear		Need to Clear	Need to Clear		Need to Clear*	
Video	Stream		Need to Clear	Need to Clear		Need to Clear	Need to Clear	Need to Clear*	
Live	Live events			Need to Clear				Need to Clear*	
Embeds	Embedded audio/video								
*This applies only if one is making a recording of a live performance.									

Key Players in the Music Marketplace

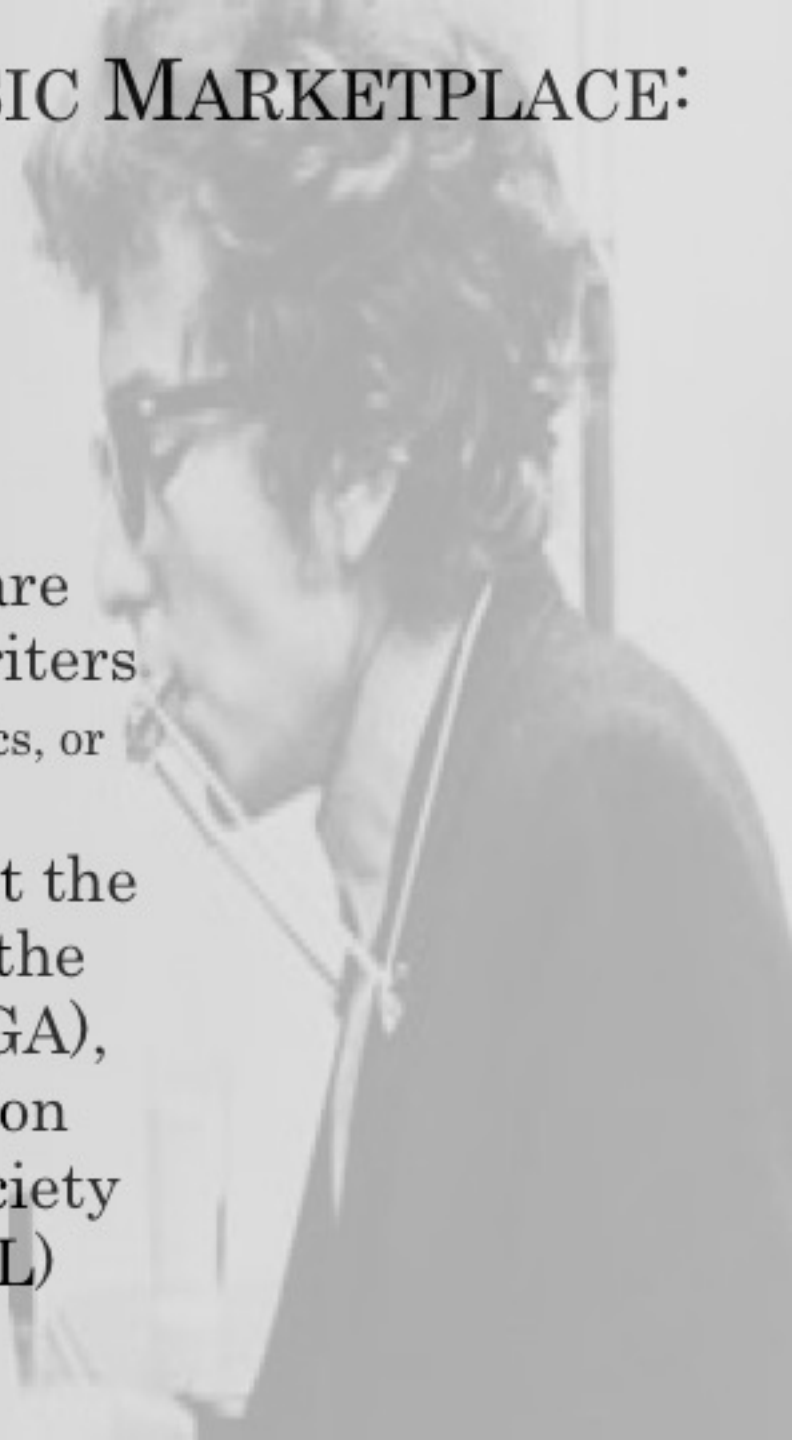
Musical works and **sound recordings** can be – and often are – created, owned, and managed by different entities

- ❖ Songwriters
- ❖ Music Publishers
- ❖ Performing Rights Organizations (PROs)
- ❖ Mechanical Rights Administrators
- ❖ Recording Artists and Producers
- ❖ Record Companies

KEY PLAYERS IN THE MUSIC MARKETPLACE:

the Songwriter.

- The authors of a musical work are composers, lyricists and or/songwriters
 - A songwriter may contribute music, lyrics, or both
- Trade organizations that represent the interests of songwriters include the Songwriters Guild of America (SGA), Nashville Songwriters Association International (NSAI), and the Society of Composers and Lyricists (SCL)



KEY PLAYERS IN THE MUSIC MARKETPLACE:

MUSIC PUBLISHERS

- Songwriters often enter into publishing agreements with music publishers
 - Publisher may pay an advance to the songwriter against future royalty collections to help finance the songwriter's writing efforts
 - Publisher promotes and licenses the songwriter's works and collects royalties on the songwriter's behalf
 - How to split royalties can be difficult considering many songs have multiple songwriters, each with his or her own publisher and publishing deal
- Trade organizations that represent the interests of music publishers include the National Music Publishers Association (NMPA) and the Association of Independent Music Publishers (AIMP)



KEY PLAYERS IN THE MUSIC MARKETPLACE:

Performing Rights Organizations (PROs)

- Songwriters and publishers almost always associate themselves with a PRO, which is responsible for licensing their public performance rights
- The two largest PROs - The American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) – represent over 90% of the songs available for licensing in the United States
- They both operate on a not-for-profit basis and are subject to antitrust consent decrees that impose constraints on their membership and licensing practices

ASCAP
WE CREATE MUSIC

BMI

KEY PLAYERS IN THE MUSIC MARKETPLACE:

Mechanical Rights Administrators

- The right to make and distribute phonorecords of musical works – *i.e.*, the mechanical right – is subject to compulsory licensing under Section 115 of the Act
- In practice, because of the administrative burdens imposed by the license, mechanical, licensing is often handled via third-party administrators
 - The oldest and largest third-party administrator is the Harry Fox Agency, Inc. (HFA)
 - Mechanical licenses are also issued and administered directly by music publishers in many instances



KEY PLAYERS IN THE MUSIC MARKETPLACE:

Record Companies

- Most commercially successful sound recordings are the product of contractual relationships between recording artists and record labels
 - Record labels usually finance the production of sound recordings, promote the recordings (and sometimes the artists themselves), and arrange to distribute the recordings via physical and digital distribution channels
 - Record labels typically handle the licensing for the sound recordings they own
- Major record labels include Universal Music Group (UMG), Sony Music Entertainment (SME), and Warner Music Group (WMG)
 - There is common corporate ownership of major record labels and major music publishers; for example, Warner/Chappell Music is a division of WMG
- Trade organizations that represent the interests of record labels include the Recording Industry Association of America (RIAA) and the American Association of Independent Music (A2IM)

BLANKET MUSIC LICENSES



PERMISSION SCENARIOS

Unlike broadcast, each instance of music used in podcasts requires some type of permission or clearance. There are several means of justifying or clearing use of music.

	<u>Description</u>	<u>Challenge</u>
Fair Use	Complies with copyright fair use	<ul style="list-style-type: none">• Fair use not always understood or easily determined.
Formal Source License	Legal documents from rights holder(s)	<ul style="list-style-type: none">• Administratively burdensome to manage• Expensive• Typically for a limited time period
Informal Source License	E-mail permission from artist/ representation to use music	<ul style="list-style-type: none">• May not fully cover risk• Difficult to manage documentation of e-mail
Licensed Music	Use fully licensed music from online music library	<ul style="list-style-type: none">• Music not necessarily of the best story-telling quality
Commission Composition	Commission original music	<ul style="list-style-type: none">• Significant effort• Expensive
No Permission	Use music without permission	<ul style="list-style-type: none">• <u>Significant</u> legal and financial risk

REAL PROBLEMS YOU MIGHT ENCOUNTER:



- **Corporation For Public Broadcasting (CPB) blanket licenses only apply to CPB covered broadcasts and music streamed on CPB covered websites.**
- **If you need a supplemental license, it takes time. Permissions departments are notoriously slow.**
- **They might not grant permission.**

Statutory License for Public and Noncommercial Broadcasting

The activities of public and noncommercial educational broadcasters are subject to a hodgepodge of music licensing protocols.

Section 118, which only applies to over-the-air broadcasts, provides a statutory license that covers such entities' public performances of musical works and reproductions and distributions that enable such performances

- ❖ Noncommercial broadcasters must clear digital performance rights for musical works (*i.e.*, for internet radio) with the PROs
- ❖ Section 118 license does not extend to the use of sound recordings by noncommercial broadcasters (instead, look to Section 114(b))

Blanket licenses

ASCAP

- Streaming license effective through 2017. Broadcast license also expires in 2017. ASCAP wants to combine streaming & broadcast into a single agreement. Currently in negotiations.
- CRB initiated a Sec 118 proceeding for broadcast, but we hope to enter into an agreement to avoid the proceeding.

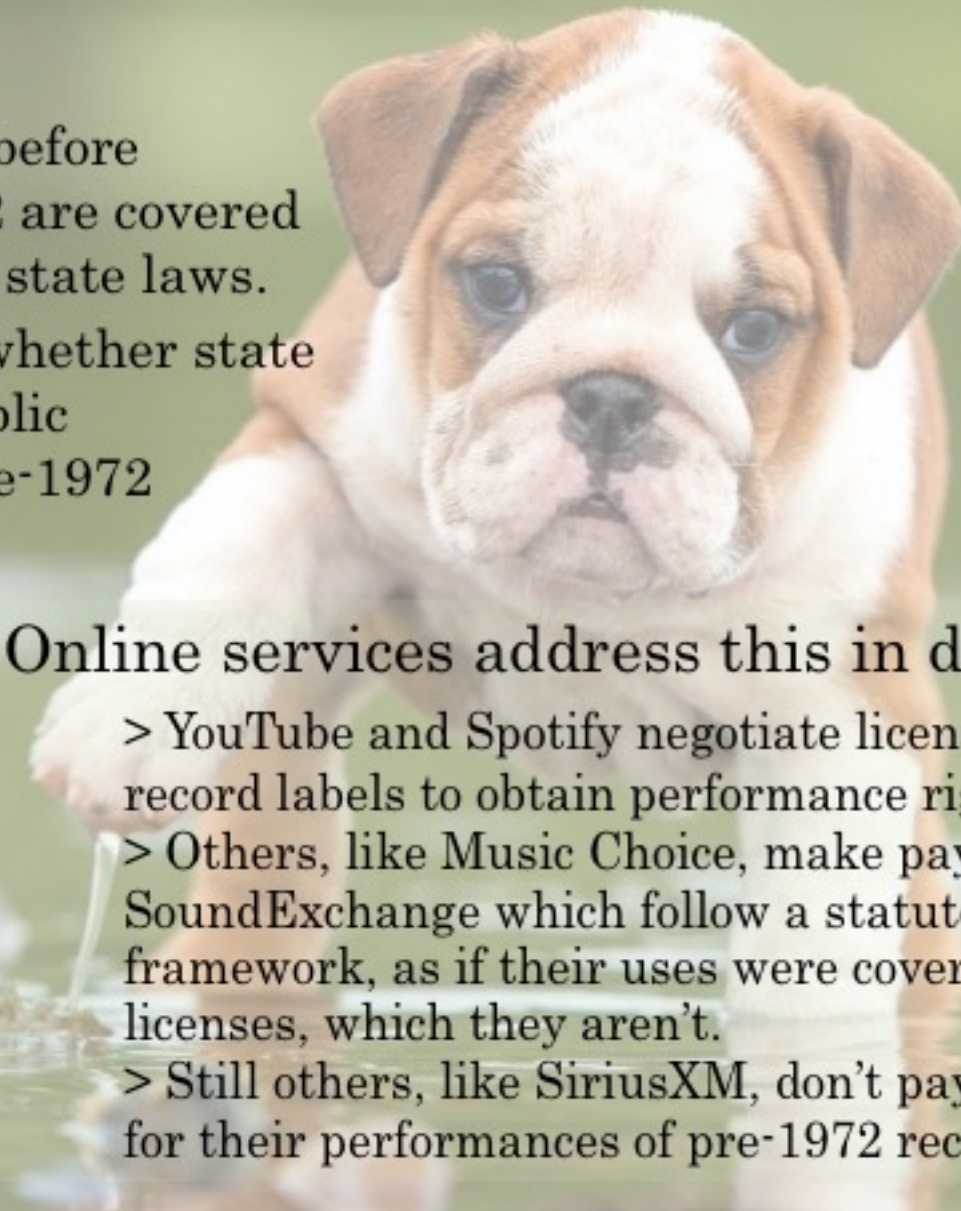
BMI

- Streaming license expired in 2015 and we have a temporary license in effect and are negotiating terms.
- Broadcast expires in 2017. Trying to negotiate before a Sec 118 proceeding begins.

Sound Exchange

- We have a 5-year agreement in place from 1/1/16 through 12/31/20. Next proceeding will begin 1/1/19.
- Covers compliant streaming in digital platforms for “sound recordings” only.

A WRINKLE: PRE-1972 RECORDINGS

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- Recordings made before February 15, 1972 are covered by a patchwork of state laws.
 - A big question is whether state laws cover the public performance of pre-1972 recordings.
 - Online services address this in different ways.
 - > YouTube and Spotify negotiate licenses with record labels to obtain performance rights.
 - > Others, like Music Choice, make payments to SoundExchange which follow a statutory licensing framework, as if their uses were covered by those licenses, which they aren't.
 - > Still others, like SiriusXM, don't pay royalties at all for their performances of pre-1972 recordings.

A WRINKLE: PRE-1972 RECORDINGS

- These practices have, of course, spurred litigation.
- Some courts have ruled that unauthorized public performances of pre-1972 sound recordings violated applicable statutory/common law.
- Federal and state courts in California both ruled against SiriusXM as did a federal court in New York.
- These rulings were not expressly limited to digital performances and thus could have implications for terrestrial radio performances of pre-1972 sound recordings.
- Similar lawsuits alleging unauthorized use of pre-1972 recordings have been filed against Pandora, Google, Apple and Rdio.



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