

SOUND

by STEPHEN PEITHMAN; AACT SPOTLIGHT, FEBRUARY 2002

If you use recorded music before, during, or after a show, you are obligated by law to pay royalties for its use as long as the music and recording is protected by copyright.

How you go about satisfying the law depends on how the music is used -- as general background in your lobby or auditorium, or as music tied to the stage performance itself.

BACKGROUND MUSIC

If you play general background music on a routine basis, you should apply for a general license from the organizations that represent the writers and publishers of the songs.

The best-known organizations are ASCAP (American Society of Composers, Authors and Publishers) and BMI (Broadcast Music Industries).

General or blanket licensing is used by business like restaurants or stores that play background music throughout the workday. If you use a lot of background music, it's usually cheaper to get the yearly blanket license. (Many colleges and universities, for example, do this to simplify royalty payments for band, orchestra, choir and theatrical performances.) ASCAP and BMI base the amount of the fee charged for the performance licenses on the type of theatre, and its seating capacity.

You can license the entire output (catalog) of a particular composer or the entire catalog of all ASCAP or BMI composers (the latter is best for general background music). However, you cannot get permission or a license for just one or two songs.

PRODUCTION MUSIC

If you ask for permission to use a recording of "White Christmas" as lead-in music for your second act, or to use the Boston Pops recording of Stephen Sondheim's "Night Waltz" to bridge between scenes two and three, you need to go elsewhere. That's because ASCAP and BMI license entire catalogs, and only for non-dramatic purposes, such as general pre-show or intermission music. If a recording is used every night for a specific play, it becomes a dramatic use, and is out of ASCAP or BMI jurisdiction.

Permission to use recorded music in combination with live stage performances (and with visual images in television, films, computer programs, websites, and other audiovisual formats) involves what is called "synchronization rights." Synchronization rights for most US (and many imported) recordings are handled by the Harry Fox Agency, Inc. (HFA). Affiliated with the National Music Publishers Association (NMPA), the agency represents most American music publishers.

HFA acts as an intermediary for many of its publisher principals in negotiations with producers, facilitating communication between the two parties, which leads to a license agreement. HFA does not set rates or determine terms of any such licenses it issues on behalf of its music publisher principals.

Synchronization License Request forms are available online at the HFA website (www.nmpa.org/hfa.html). You can't submit the form online, however; you print out the form, fill it in, and send by mail or fax to The Harry Fox Agency.

Since the recorded use of music in combination with visual images (i.e. synchronization) does not come within the scope of the compulsory license provisions of the US Copyright Act, licenses for the use of music in live stage performances must be negotiated on an individual basis between the copyright owner and the prospective user. So don't wait until the last moment; obtaining rights, like all legal matters, can take time.

MUSIC IN THE PUBLIC DOMAIN

If the musical selection is no longer protected by copyright, you need not seek permission. However, since protection includes both the music and the performance, it is not always easy to determine from a recording just what is protected by law. As a rule of thumb, most songs written in the last 75 years, and most recordings made in the last 50 years, are protected.

Recordings often do list whether a song is ASCAP or BMI. The websites for ASCAP and BMI also have searchable databases for the composers and copyrighted songs represented by each composer. (ASCAP's database is called "ACE." BMI's is called "BMI Repertoire.") The Harry Fox Agency does not offer a searchable database at this time.

CONTACTS:

ASCAP: One Lincoln Plaza, New York, NY 10023, 212-621-6000, Email: <Licensing@ascap.com>, Website: <www.ascap.com>

BMI: 320 W 57th St., New York, NY 10019, 212-586-2000, Email: <genlic@bmi.com>, Website: <www.bmi.com>

SESAC: 5 Music Square East, Nashville, TN 37203m 615-3200055, Website:
<www.sesac.com>

The Harry Fox Agency, Inc.: Synch Dept., 711 3rd Ave., 8th Floor, New York, NY
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