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Issues Involving Copyright and the Use of Music in an Audio-Visual Work.

Topic: Music Licensing - There are generally 2 copyrights in any music you use, and different people may own each:

- (1) The musical work recorded (“Song”), and (if you use pre-recorded music)
- (2) The sound recording (“Master”).

If you use existing music created by a third party with a “live” copyright, you “need” to secure a license from the copyright owner (called “clearing” the rights). Remember that there are two copyrights and each may or may not require a license.

If you require a license, but do not secure one, then using that music in your Work without a license is technically infringement.

If the copyright on either or both the Song and Master are expired (called “in the Public Domain”) you can generally use that music without a license. Find information on the Public Domain at www.pdinfo.com.

The license of the Master is called a Master Use License. The license for the Song is called a Synchronization License.

To clear a right: (1) find out who owns it (look on the CD, look at www.bmi.com or www.ascap.com), (2) contact them, (3) make a deal, and (4) get it in writing!

Topic: Copyright is not one right, but a bunch of rights; including (for music) the right to:

- (1) Synchronize to a visual image (required for a film),
- (2) Publicly perform (to perform it live or play it on the radio, or as part of the film),
- (3) Mechanically reproduce (on audio-only records, such as a soundtrack album),
- (4) So-called “grand” rights (this is if you base your film on the music), and
- (5) Alter the work (to have someone rewrite it, remix it or re-record it).

When you license music, you acquire specified, limited, rights in that music. The time period, geographic region, and type of exploitation (TV, theatrical, live performance, non-theatrical, home video, digital distribution, etc.) are all examples of how the grant of rights may be limited.

A Festival License is the right to synchronize it in the film for promotional exhibition only at film festivals where no or small fees are paid for admission. This may be granted for free, and should include pre-set fees to acquire other rights of exploitation.

Topic: COLLABORATION You may also create or have someone else create (a “commission”) new Songs and/or Masters (you can make a new recording of an old song). This raises other issues, including collaborative issues.

Unless all parties agree otherwise, anyone that provides creative service towards the creation of a copyrightable work (song, recording, script, film) can make a claim of ownership.

If you are an author, then you are an owner; always discuss ownership issues before you start. However uncomfortable, it is most often easier than after things start to happen. Make sure everyone involved agrees, then put it in writing, however simple, and sign it.

When licensing, or commissioning, a work: make sure the person or entity actually owns the rights and agrees to protect you from ownership claims by third parties.

However you get the music (or anything): ALWAYS GET THE RIGHTS IN A SIGNED WRITING!

Topic: TRADEMARK –vs. – PRODUCT PLACEMENT