



Copyright in Music

Eric E. Johnson

ericejohnson.com



Most rights sharable

Separate copyright interests:

- Sound recording ®
- Musical composition ©

Musical composition ©

- Performance right
 - Radio stations, satellite radio, webcasters, stadiums, stores, etc. get rights to play through blanket licenses with performance rights societies (ASCAP/BMI/SESAC)
 - ASCAP and BMI are subject to consent decrees for licensing rates
 - Blanket licenses
 - do not cover movies or movie theaters
 - Performing rights societies divvy up the money
- Sound-alike recordings would infringe

Sound recording ®

- Not protected originally - prior to 1972, sound recordings were protected under state laws, not federal law. In 1972, sound recordings were brought under the federal copyright scheme.
- No performance right
 - E.g., radio stations can play the records, and the owner of the sound recording cannot stop them or get any royalties
- Sound-alike recordings do not infringe ®
- There is a performance right for webcasting and satellite radio
 - Subject to compulsory licensing and royalty scheme under 17 USC §114

Know your music licenses:

- Blanket performing-rights-society license
- Mechanical license
- Synchronization license
- Master use license

Blanket performing-rights-society license

- A license of the ©
- Grants the right to play music to the public
- Given to restaurants, sports arenas, television stations, radio stations
- But not movie theatres in U.S.
 - ASCAP v. Alden-Rochelle (1948) (antitrust laws prohibit requiring blanket licenses of theatres)

Mechanical license

- A license of the ©
- Grants the right to record a composition on to a phonorecord and distribute it
- Compulsory mechanical license available under 17 USC §115
 - Applies to published, non-dramatic musical compositions
 - The Harry Fox Agency cuts deals on the same terms as §115, but without the hassle

Synchronization license

- A license of the ©
- Negotiate with publisher
- Grants the right to use a music composition © in synchronization with moving pictures in an audiovisual work (motion picture, television)
 - Purchased in combination with public performance rights, if needed (e.g., for motion pictures, b/c no blanket licenses)
- No compulsory sync license available

Master use license

- A license of the ©
- Grants the right to use a sound recording ©
- Negotiate with record company
- No compulsory license available

Question:

How could a songwriter make money off a gratis sync license in a motion picture?

Question:

How could a songwriter make money off a gratis sync license in a motion picture?

When the show is played on television, the composer will get performance royalties.