



Music Copyright

Expression
Copyright

Eric E. Johnson

ericejohnson.com



Konomark
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
 - But 17 U.S.C. §115 gives you the right to get a compulsory license for non-dramatic musical works

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 U.S.C. §115
 - Applies to published, non-dramatic musical compositions
 - The Harry Fox Agency cuts deals on the same terms as § 115, but without the hassle

17 U.S.C. §115

- Right to make cover versions
- Has contributed a lot of recorded music to the corpus of works

17 U.S.C. §115

- “A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work ...”

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