



Expression
Copyright

Music 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. As of 1972, new sound recordings were brought under the federal copyright scheme.
- As of 2018, federal copyright protection was extended to pre-1972 sound recordings, pre-empting state law.
- 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 ...”

Motola v. EMI America Records, Case No. 82-6308-PAR (CD. Cal. April 18, 1984)

Eddie Cochran’s “Jeanie, Jeanie, Jeanie” (the original)

Well Jeanie, Jeanie, Jeanie come and dance with me
Well I teach you every dance from here and 'cross the sea
Well now first we hop, yeah-yeah-yeah, then we bop
Yeah-yeah-yeah, then we swap or rock 'n' roll
We'll do the stroll ...

Stray Cats’s “Jeanie, Jeanie, Jeanie”

Well, Jeanie, Jeanie, Jeanie come and dance with me
Well, there's a real wild party and the booze is free
First we'll fuck
Yeah, yeah, yeah tough luck
Yeah, yeah, yeah then we'll rock
We'll rock and roll, well, do what you're told ...

Motola v. EMI America Records, Case No. 82-6308-PAR (CD. Cal. April 18, 1984)

“Although the musical arrangements in this case are, by plaintiff’s own admission, quite similar, the changes in the lyrics are substantial and clearly beyond the scope of the § 115(a)(2) privilege. Regardless of whether these changes are detrimental or beneficial with regard to the income produced by ‘Jeannie, Jeannie, Jeannie,’ the ultimate effect is to change radically the tenor and appeal of plaintiff’s song. The references to ‘wild parties’ and ‘free booze’ and the insertion of obscenities into the lyrics must certainly have the effect of ‘pervert[ing], distort[ing], and travesty [ing]’ plaintiff’s composition. Musicians and record companies should be required and Congress has determined that they are required, to obtain the consent of the copyright owner before making these kinds of changes in a protected work.” - *Judge Pamela A. Rymer*

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” (meaning make copies of) a sound recording ©
 - Such as putting into films, putting onto compilation albums, sampling
- 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.

Question:

What music licenses would you want for a remake of the 1988 film *Footloose*?

Question:

What music licenses would you want for a remake of the 1988 film *Footloose*?

1. *Public performance license, since no blanket license for U.S. movie theatres*
2. *Synchronization license (get in same document as above)*
3. *Master-use license, if you want to re-use sound recordings from the original movie in the remake*
4. *Mechanical license, to “print” CDs, since you’ll want a soundtrack album*

Question:

Can you do a cover version of “Back in Black” by AC/DC even if AC/DC doesn’t want you to? Can you play it live at the Viper Room in LA? Can you release it on CD and iTunes?

Question:

Can you do a cover version of “Back in Black” by AC/DC even if AC/DC doesn’t want you to? Can you play it live at the Viper Room in LA? Can you release it on CD and iTunes?

Yes!

Blanket licenses at performance venues allow you to play it live.

17 U.S.C. § 115 allows you to record your cover version and sell it on CD and iTunes.

(But you won’t be able to put it in a motion picture without the publisher’s permission.)