

# Music Copyright

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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

### 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 for the 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, to use songs 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?

*Yes!*

*17 U.S.C. §115 allows you to record your cover version.*

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

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