

Part 3: Music Licensing -- from the Basics to the Outer Limits

The Myriad World of Music Licenses

By Cydney A. Tune

This article is the third in a multi-part series on music licensing.

Part 1 in this series contained a discussion of the basic copyright principles that are important in licensing music and the unique layers of rights that are involved (*Entertainment and Sports Lawyer*, Fall 2003). Part 2 included a discussion of the initial considerations for both the potential licensor and the potential licensee of music (*Entertainment and Sports Lawyer*, Winter 2004). Here, in Part 3, I discuss the primary types of music licenses, with a description of each type of license by which rights in music are granted along with a brief discussion of some of the key terms and issues concerning such licenses.

The type of license needed to use music depends on the specific use that will be made of the music and often more than one type of license must be obtained in order to make the intended use of the music. As was discussed in the prior parts in this series, the type and number of licenses required depends on the layers of rights that are involved with the specific music and the way that the licensee intends to use the music.

The discussion below is based on present practices. Because there are so many different types of music licenses and so many unique issues that pertain to each, only the most common types of licenses are included here and only the basics are discussed with respect to each type of license. Hopefully, this discussion will be sufficient to enable you to determine what type of license or licenses your client needs to obtain and will give you a "snapshot" understanding of each type of license.

Print license

A print license traditionally allows a licensee to make printed copies of

music, such as sheet music, reprints of lyrics in books or articles and printed compilations. Historically, print licenses were the primary source of revenue for music publishers. Before movies, radio and TV, sales of sheet music were huge. Now, however, print licenses have become a very small part of music licensing. They nevertheless still exist and are used, particularly in connection with music-instruction books, for collections of songs and for concert editions prepared for use by symphonies and other groups. There is also a demand for music notation and lyrics on the Internet.

Contrary to what many believe, quoting lyrics in a book or magazine requires a license from the copyright owner of the song.

Contrary to what many believe, quoting lyrics in a book or magazine requires a license from the copyright owner of the song. Even if the lyrics are to be used in a textbook, such a use does not necessarily constitute fair use and a license would normally be required. For use of lyrics in a book or a magazine, copyright owners usually use a short form of permission agreement and charge a relatively small fee. The license is usually limited to one hard cover edition of the book, with additional fees for paperback editions, editions published by other firms, abridgements or translations.

A songwriter typically grants the exclusive print rights in a song to the music publisher. The music publisher may then grant exclusive print rights to a distributor of sheet music. Aside from these situations, however, print licenses are rarely exclusive. In particular, music copyright owners typically keep the exclusive right to authorize the printing of the music into a compilation (also known as a "folio"). Music folios include, for example, songbooks that contain a particular genre of music, a particular artist or music from a particular time period. The licensor will want to limit the scope of the license grant to permit only certain specified uses. On the other hand, the licensee would usually prefer to obtain the flexibility to use the music in any kind of folio during the term of the license.

The Internet has created a new use of music with the electronic publishing of sheet music. Transmission of musical notation or lyrics from a Web server to individual computers is a public display of the music and thus a public display license would be required for such use. Presently, these licenses are not being handled by the performance rights societies. Thus, an electronic print (display) license must be negotiated directly with the music publisher or other copyright owner that owns the rights to the music notation and lyrics.

Performance license

A performance license allows the licensee to render public performances of the copyrighted musical work. Under the Copyright Act, a "public performance" is any performance at a place open to the public or where a group of people "outside of a normal circle" of family and friends are gathered or a transmission to such a group or to the public by means of a device. 17 U.S.C. § 101. Public performances of music are everywhere these days — music is performed, for example, in grocery stores and other retail businesses, in shopping malls and on elevators, as well as on the radio. It would be very difficult for each songwriter to police and enforce his or her public performance rights in every store and mall. It would also be difficult and expensive

for each place in which live music is performed to have to obtain a license for each song that is performed there.

For these and other reasons, performance rights societies were formed by songwriters and music publishers early in the 20th century. In the United States, the performance rights societies are ASCAP, BMI and SESAC. These societies administer virtually all performance licenses in the United States. There are also more than 40 similar organizations that license performance rights in other countries.

Professional songwriters and music copyright owners select and join a performance rights society or become affiliated with one. Typically a music publishing agreement contains an assignment of the songwriter's copyright to the music publisher but retains the songwriter's right to a share of the performance royalties generated by the song. The songwriter then grants the relevant performance rights society his or her "writer's share" of the royalties.

The music publisher provides its performance rights society with a list of the musical compositions in the publisher's catalog and updates the information each time a new work is added to the catalog. The performance rights societies grant licenses, administer the collection of license fees and payment of royalties and enforce performance rights when necessary. The society pays half of the performance royalties for a particular song to the copyright owner and half to the songwriter.

Performance licenses are always given on a nonexclusive basis. Often blanket licenses are obtained. A blanket license gives the licensee the right to render an unlimited number of performances of one or more of the songs in the relevant catalog in exchange for the payment of an annual fee. Fees for blanket licenses for radio, TV and certain venues are usually a percentage of gross receipts. The societies also have schedules of fees that they use to establish the flat fee to be paid by restaurants, schools, bars and similar establishments. Each performance rights society has forms of licenses that it has developed for different types of uses.

Note that all members and affili-

Transmission of a musical work in a sound recording over the Internet is a public performance.

ates of performance rights societies are free to negotiate nonexclusive licenses directly with potential licensees and on any terms they wish. This right and process are governed by the terms of consent decrees entered into between BMI and the Department of Justice and between ASCAP and the Department of Justice. However, very few performance licenses are granted directly by copyright owners and most users of music seek licenses from the performance rights societies.

A performance license is needed to publicly transmit a musical work over the Internet. Performance rights societies have developed, and are refining, special forms of licenses for online performances. Also, copyright owners take the position that transmission of a musical work in a sound recording over the Internet is a public performance, regardless of whether a copy is being made by the receiving computer and regardless of whether the work is being audibly rendered at the time of transmission.

Mechanical reproduction license

A mechanical reproduction license allows the licensee to reproduce music in a form that may be heard with the aid of a mechanical device, such as a record, tape or CD. It is important to note, however, that a mechanical license applies only to such products that will be distributed to the public for private use.

Compulsory license

The Copyright Act provides for a "compulsory license" for mechanical reproduction. This means that if the copyright owner has used or permitted the use of a song for mechanical reproduction, anyone can make a

mechanical reproduction of that song by paying a fee set by copyright law (the statutory rate) or a negotiated rate that is less than the statutory rate. See 17 U.S.C. § 115. In other words, once a recording of a song has been made, the copyright owner of the composition cannot deny permission to use the song as long as the statutory rate or a negotiated rate is paid.

Negotiations vs. compulsory license provisions. The compulsory license provision of the Copyright Act has burdensome procedures, particularly with respect to accounting and notice to the copyright owners. For this reason, most mechanical licenses are negotiated between the copyright owner and the licensee and do not include the strict provisions of Section 115. Nevertheless, the statutory provisions provide a framework for the negotiation of such licenses and the statutory rate constitutes the maximum royalty that can be charged by the copyright owner.

Arrangements. One may make an arrangement of the music being used under a compulsory license but not if the arrangement causes the music to become "perverted, distorted or travestied."

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 and shall not be subject to protection as a derivative work under this title, except with the express consent of the copyright owner. 17 U.S.C. § 115(a)(2) (emphasis added).

Typical mechanical reproduction license terms

Type of media. The type or types of media on which the mechanical reproduction can be made must be specified. Be sure to specify the permissible formats. If you are representing a licensee, try to obtain a license in which the licensee may use the song in any format or, if the licensor will not agree to give such broad rights, try to negotiate in the original

license options to add additional formats and try to establish the rates and other terms for such additional formats.

Term. The term is usually not stated and is generally considered to be for the life of the copyright in the song. Normally, however, the license can be terminated by the licensor for nonpayment of the license fee.

Territory. The territory is usually limited to the United States. Mechanical licensing outside the United States is highly complicated and is not addressed in this article.

Exclusivity. Mechanical licenses are never granted on an exclusive basis.

Mechanical rights agencies. In the United States, many copyright owners use a special representative to license and administer the mechanical licenses in their compositions. The largest U.S. mechanical rights agency is The Harry Fox Agency. It was founded in 1927 by the National Music Publisher's Association and currently represents approximately 25,000 music publishers. Other organizations that negotiate mechanical licenses include the Songwriter's Guild of America and SESAC Inc. In other countries, the collection of mechanical royalties is usually done by a single mechanical rights agency or collection society in each territory.

Internet transmission. A mechanical license would be needed in order to reproduce by transmission musical works in phonorecords. The Digital Performance Right in Sound Recording Act of 1995 contains a section called "Mechanical Royalties in Digital Phonorecord Deliveries." This provision makes reproduction of musical works in phonorecords, made by transmission, subject to the compulsory licensing provisions of the Copyright Act. Many music publishers take the position that any interactive transmission of music over the Internet automatically constitutes a mechanical reproduction and thus requires a mechanical license.

Electrical transcription licenses

An electrical transcription license permits the reproduction of music in recordings that are not accompanied by moving pictures and that are made to facilitate radio broadcasts or for

purposes other than the distribution of the song to the public for private use. These licenses are commonly used for the reproduction of music by background music services, radio stations, producers of syndicated radio programs and special music services, such as music reproduced for in-flight use by commercial airlines. "Background music services" include, for example, music played in hotels, restaurants and elevators.

For this type of license, the intended use is for public broadcasting purposes as opposed to distribution for private use. One effect of this distinction is that electrical transcription licenses are not covered by the compulsory license provisions that govern mechanical licenses. Thus the terms of electrical transcription licenses

Electrical broadcasting licenses are for public broadcasting.

are freely negotiable and permission to use the song can be denied by the copyright owner.

Electrical transcription uses require a performance license, because use of music in radio broadcasts, radio ads and as background music constitutes a public performance of the music. The electrical transcription license does not usually include a performance license. If the electrical transcription license does not include a performance license, one must be obtained from the applicable performance rights society.

Typical electrical transcription license terms

Fees. The fees are negotiated and there is no statutory rate to control the amount of the fees. However, typically the fees are not high compared to other types of uses. Separate fees are collected for the electrical transcription performance license. As discussed above, performance licenses are usually obtained on a blanket basis from the relevant performance

rights society and are collected from the broadcaster or other organization rendering the performance.

Media. The most important limitation is that the media is usually limited to audio devices and does not allow uses that include visuals.

Specified uses. It is important to carefully limit the permitted uses under the license. The licensor should make sure that the description of permitted uses is as specific as possible. For example, if the license is for radio use, the license should specify the precise radio show for which the license applies.

Term. The term is usually one to three years, subject to earlier termination for nonpayment of fees.

Territory. The territory is usually limited to the United States.

Exclusivity. Exclusivity is rarely given.

Synchronization licenses

A synchronization license allows the licensee to synchronize music with an audiovisual work, such as a TV program, music video or movie and to make copies of the audiovisual work, but only for the purpose of exhibition in theaters or broadcast on TV and not for distribution to the public. "Synchronization" means recording music in "timed-relation" with the moving pictures in an audiovisual work. These types of licenses are often called "synch" licenses.

Typical synch license terms

Fees. The fee for a synch license is usually a one time, flat fee. This fee compensates the licensor for use during the term of the license, rather than being based on the number of copies made or how many times the movie or other work is exhibited.

Scope of use. It is quite important that permitted uses are narrow and carefully defined in the license. The licensee should try to get options for use in other media at the time of the original negotiation. The licensee might also seek to get option for use by other means of distribution.

Term. For movies, the term of the license is generally perpetual. For TV, it can be a more limited term (such as five years) but the trend is toward a perpetual term.

Territory. While the territory may be limited, it is usually worldwide. It is particularly important to a movie producer to obtain worldwide synch rights.

Exclusivity. Synch licenses are almost always nonexclusive. A limited period of exclusivity may be granted, however, if a song is specially featured in the work or if the song title is the title of the work and if a substantial fee is paid.

Screenings. The copyright owner should be able to attend at least one pre-release screening in order to check how the music is used and make sure that the use is within the scope of the license, as well as to check the credits.

Trailers. The trailer or preview of a movie is a separate work from the movie and thus a separate synch license is needed to use music in a trailer. These licenses typically limit use of the trailer to movie theaters. The trailer synch license can also give the licensee the right to use the song in videocassettes and videodiscs of other works and an additional fee would be charged by the licensor for such use. Trailer synch licenses usually have a one-year term, with renewal options, and the territory is normally worldwide. Many trailers are now being streamed on the Internet and such streaming has become an important marketing tool. Thus, the licensee should seek to obtain the necessary rights for promotional streaming if possible.

Performance rights. The synch license usually does not grant the performance rights. Rather, in the United States, the producer of the work obtains a performance license from the relevant performance rights society on a blanket basis, for a fixed fee. The fee is usually the same as the fee for the synch license. In other countries, local performance societies collect these fees and also collect performance fees for the public performances in theaters from the theater owners.

Business video productions. Sometimes a company will want to use a song in a video for in-house use such as for training of employees or customers. A special synch license can be obtained for such a use, at a flat

fee and for a term that is usually three to five years. Use of the song is limited to internal exhibition or broadcast.

Internet. If a Web site produces video content specifically for the Internet, any recording of songs that are synchronized as part of the production would require a synch license.

Videogram licenses

A videogram license allows use of music in recordings accompanied by moving pictures, such as TV and movies, for distribution to the public in videocassettes, laser discs and similar devices for private use on a television set. Videogram use does not fall within the compulsory license

If the fee is based on a royalty, the license needs to include provisions on payment and accounting.

provisions otherwise applicable to mechanical reproductions because the compulsory license provision applies only to phonorecords (i.e., devices in which only sounds are fixed).

Typical videogram license terms

No public performance. No public performance license is required because private use on a television set is considered to be a private performance, not a public performance.

Fees. The licensee would prefer to pay a one-time flat fee, like a regular synch license. However, because of the lack of availability of performance royalties, copyright owners prefer to charge a fee on a per-copy basis, believing that they should benefit from the economic success of sales of the home video. Needless to say, the issue is highly negotiated. Sometimes the copyright owners compromise by charging a flat fee that covers a set number of copies, with the option to make additional sets of copies for an additional flat fee payment. The copyright owner usually wants to be paid

an advance, no matter what fee basis is used.

Term. The term of videogram licenses varies, depending on the fee structure. These licenses are often for a limited term with a right to renew (if the movie is successful and there is continuing interest). If the videogram license is granted in conjunction with a theatrical synch license and a royalty is being paid, then the videogram license typically has the same term as the theatrical synch license.

Territory. The territory is usually worldwide if the copyright owner has the necessary rights in the song. Often, however, the music publisher only grants rights in the United States and Canada because the music publisher does not control the rights to the song in other countries.

Exclusivity. The license is almost always nonexclusive.

Payment and accounting. If the fee is based on a royalty, the license needs to include provisions on payment and accounting. It should, for example, state when payments will be made and how they will be made. Audit provisions should also be included.

Copies. The copyright owner should get at least two free copies of the video or disc. Most licensors, however, need more than two copies. Thus, if you represent the licensor, you should try to negotiate a larger number of free copies for the licensor. You should also seek a provision allowing the licensor to purchase additional copies at cost or at some other reduced rate.

Nontheatrical videogram licenses. These licenses are used when a company wishes to make and distribute copies of a video program to employees, to retailers or to customers. Permission is usually granted for a fee based on the number of units made and distributed or for an annual fixed fee. The license is often negotiated along with the nontheatrical synch license and can be made as part of that synch license.

Video yearbooks. Many high schools and colleges now produce "video yearbooks" that are sold in addition to the traditional printed yearbook. A license is required for such use although the licensing fee is relatively small.

Internet. If the transmission of music causes a reproduction of the audiovisual work on a computer, a videogram license would be needed. These licenses are not covered by the compulsory license provisions of the Copyright Act and copyright owners can thus deny permission and have a great deal of flexibility in negotiating the terms of a license.

Sampling license

"Digital sampling" or "sampling" refers to a process that begins with the recording of a sound recording or a portion of a sound recording, using a device that can store the recording in the memory of a computer. Any music file that can be stored in a computer in digital form may easily be displayed, modified, copied or transmitted. Using a triggering instrument, a musician may replay sampled sounds and can easily alter such sounds, including the pitch and speed, can insert new sounds, delete sounds, play the notes backwards or add effects. Sounds can be sampled from live performances or from recorded sources and can be easily stored and distributed.

Unauthorized sampling can be an infringement of copyrights both in the sound recording from which the sample was taken and in the musical composition in the sampled recording. When sampling began, many artists believed that sampling was not a copyright infringement, apparently believing that sampling constituted fair use of the copyrights. Courts have now made clear, however, that sampling is generally *not* fair use and that a license is required. See, e.g., *Grand Upright Music Limited v. Warner Bros. Records Inc.*, 780 F.Supp. 182 (S.D.N.Y. 1991). There can, however, be instances where a sample does not constitute infringement of a song, such as when only one or two notes are sampled. Nevertheless, the doctrine of fair use will not justify sampling in most instances.

Licensing the composition

Mechanical license. If permission to use a recording of a copyrighted composition is granted to a sampling musician, the license granted will normally be a mechanical license.

Not compulsory. The use of a sample of a copyright-protected song is not subject to the compulsory licensing provision of the Copyright Act. This is because the compulsory license provision excludes a musical arrangement of a song that "changes the basic melody or fundamental character of the work." 17 U.S.C. § 115(a)(2). Because it is not compulsory, the copyright owner can deny permission.

Fees. The fees for sampling are freely negotiated and depend on the bargaining power of the parties and the circumstances. The licenses are sometimes granted for a one-time flat fee. In other instances, the fees include a royalty typically based on per-unit sales or on a percentage of gross or net receipts. The most common

The doctrine of fair use will not justify sampling in most instances.

arrangement is one in which the owner gives a mechanical license at some percentage below the statutory rate and also receives a percentage of the performance royalties collected for the new record that contains the sample.

Co-ownership. If the copyright owner has a strong position and the sampling musician wishes to avoid litigation, the parties can negotiate a co-publishing agreement in which the copyright owner is granted co-ownership of the new composition containing the sample. This insures that the copyright owner will share in all sources of revenue from the new composition. However, a number of problems can arise from co-ownership, particularly those arising from the right to grant mechanical licenses to others. A discussion of co-ownership matters is outside the scope of this article; however, it is important that you familiarize yourself with these issues before you negotiate such an arrangement on behalf of a client.

Licensing the sound recording

Master use license. The license granted by the owner of the copyright in the sound recording will normally be a master use license.

Fees. The copyright owner of the sound recording, usually the record company, will typically accept a one-time flat fee for the use of samples. If the sampling is substantial or recognizable, however, payment of a royalty may be required instead. Sometimes, when the portion of the sound recording sampled is very small or unrecognizable, a record company may grant a license for a nominal fee.

Public performance. Traditionally, there is no general public performance right for sound recordings. The Digital Performance Right in Sound Recordings Act of 1995, however, created a new limited public performance right for sound recordings. The act also broadened the existing compulsory mechanical license provision to include the reproduction and delivery of musical works in sound recordings by electronic transmission. Thus, use of a sound recording that is protected by copyright on the Internet requires that a license be obtained from the copyright owner.

Musical product licenses

Musical product licenses permit the use of musical compositions and, if relevant, of sound recordings in consumer products. New products that use music are constantly being developed and computer chips containing music are being used in products at an ever-increasing rate. We now have, for example, greeting cards that play music when they are opened, stuffed animals that play music when a button is pushed or a body part is squeezed and a myriad of other products in addition to the traditional music boxes.

Sometimes the products use a licensed sound recording. More often, however, the manufacturer commissions the sound recording to be made as a work for hire and owns all of the rights in it or the product generates the sound mechanically — with a computer chip, for example — and thus no sound recording is used. Note that some products use lyrics as opposed to music.

Typical music product license terms

Fees. Typically the copyright owners charge a fee that is based on a percentage of sales of the product or of revenue received. Sometimes the licensor charges a flat fee per item sold or a fixed amount that is a minimum below which the royalties cannot fall regardless of the amount of products that are sold. The licensor also usually seeks an advance against royalties. Licensors are usually not willing to grant a license on a flat fee basis because there is no potential to receive public performance royalties. Charging a fee based on the number of units sold or revenues derived from product sales allows the licensor to share in the economic success of the product.

Term. The term of a music product license is typically one to three years. The licensee should seek one or more options to renew in case the product is successful and should also try to get a sell-off period after expiration of the license during which any product remaining in inventory can be sold off.

No public performance. There are no potential performance royalties as long as the products are used for personal, noncommercial purposes and thus performances of the song in the products are considered to be private performances.

The term of a music product license is typically one to three years.

Compulsory license provision applicability is unclear. Licensors take the position that the compulsory license does not apply although there have been no cases on this issue, and it is not clear how a court would decide. If the compulsory license provision were to apply, the licensee would be able to limit the amount of the fee to the statutory rate; the copyright owner can negotiate better terms only

if the compulsory license provision does not apply. On the other hand, if the licensee wants to use lyrics instead of music, the compulsory license provision would clearly not apply.

Media. The product should be fully described, with as much detail as possible, in the license.

Territory. The territory is usually limited to the local market for the product. If foreign rights are sought, the licensee may need to deal with foreign music publishers in the relevant countries.

Production music licenses

Sometimes a potential licensee does not need to use a particular song but rather wants to use a particular type of music. In other instances, the potential licensee cannot locate the song's copyright owner or is denied permission by the copyright owner. In such circumstances, a license can be obtained from a production music library. These libraries have music that has been recorded for production purposes and is usually organized in the production music library by

Exclusive Autograph Deals: What Value to the Athlete and Their Fans?

By Serena Morones

Exclusive autograph contracts have risen in popularity in recent years. Upper Deck, Mounted Memories and others have signed athletes such as Michael Jordan, Shaquille O'Neal and John Elway to contracts requiring these athletes to only sign memorabilia under their careful authentication procedures.

If fans want autographed memorabilia from these players, they must buy through these companies or face the risk of buying a forged product.

Athletes are eager to get the big upfront dollars paid in these contracts. But are these deals really good for the athlete in the long run? What about the fan? How much money is a fan willing to pay for authenticity?

This article explores the financial

nature of exclusive autograph contracts, as well as their impact on the memorabilia market place and on the fans.

Memorabilia market

In the 1970s, the memorabilia market consisted of a very limited supply of vintage items traded by serious collectors. Through the promotion of athlete heroes by the big footwear companies, the emergence of memorabilia retail chains, the Internet and memorabilia distribution companies, the market has expanded to an estimated \$1 billion a year industry.

The industry peaked and slowed in the 1990s and currently faces serious challenges as many big companies sit on excess inventory and high-end retail

stores see declining inventory turns.

The market has also battled the scourge of forgery. In fact, some experts estimate that more than 80 percent of memorabilia sold today is not authentic.

The problem of rampant autograph forgery gave birth to the concept of the exclusive autograph contract arrangement, where an athlete agrees to only provide autographs to one memorabilia company. In theory, fans would place more confidence in the authentication process and exclusivity of the big companies and more likely buy memorabilia from those companies.

Athletes want this exclusive arrangement for several reasons. First, the deals often provide cash up front in exchange for a promise of signing autographs over several years. Second, the big companies will take many autographs and provide distribution channels to make the athlete's signed memorabilia available to a wider market. Third, the arrangement is very simple. The athlete does not have to attend signing shows or deal with many different memorabilia companies.

music genre or by type of instrument. The library licensing the production music usually owns the rights in both the sound recording and in the musical composition and can thus grant one license with all necessary rights except performance rights.

This type of music is often referred to as "production music," "library music," "needledrop music" or "canned music." Production music is often licensed on a blanket basis, with the payment of an annual fee that allows the licensee to use an unlimited amount of music from the library over the course of the year.

Sometimes production music is licensed for each segment of music used instead of on a blanket basis, but this is less common. Because production music is typically used on audio-visual projects, the terms of a production music license are similar to those in a synch license.

Performer clearances

Though a detailed discussion of the right of publicity is outside the scope of this article, you will need to consider the artists' rights when

determining what licenses are required. Even after licenses have been obtained to use a song and, where necessary, to use a sound recording, the artists' rights must still be considered. In many instances, the use must be cleared with the artist as well as with the copyright owners. In other instances, the licensor of the song or sound recording already has obtained the necessary license from the artist that will cover the intended use and no further license or permission is required.

The right of publicity requires that a license be obtained in order to make commercial use of a person's name or likeness. Further, several cases make clear that a license must be obtained for commercial use of music that imitates a performer's voice or style (see, e.g., *Midler v. Ford Motor Co.*, 849 F.2d 460 (9th Cir. 1988) (Bette Midler sound-alike in Ford commercial); *Waits v. Frito-lay Inc.*, 978 F.2d 1093 (9th Cir. 1992) (singer Tom Waits' voice imitated in commercial for tortilla chips)). Permission is also needed from a performer in order to make an audio or video recording of a live per-

formance or to distribute recordings of a live performance.

Conclusion

This overview is intended to give a brief outline of some of the more important issues associated with negotiating a music license and to provide a basic understanding of the different types of music licenses and of the rights involved. It is, however, by no means exhaustive and, as is the case in any licensing transaction, there are many complexities that arise and must be considered during any specific negotiation.

Music licensing is an area that continues to evolve, especially as new technologies are developed and digital delivery of music expands. Such development and expansion, coupled with an ever-increasing array of products containing music, keeps this area of the law both stimulating and challenging.

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