

SOUNDTRACK

Often we fail to appreciate just how important music is in enhancing the cinematic experience; a scene can boast stunning cinematography and great acting, but often it is using just the right piece of music that will nudge a scene into iconic territory, where it will never be forgotten.

Music Rights

Legal advice on using music in your film and making a music video.

Whatever music you use there are two licences that you need to obtain for each piece:

Publishing licence: from the people who own the copyright to the piece of music i.e. lyrics and composition. You should note that for this kind of copyright, copyright exists only when the music or words have been recorded or written down.

Recording licence: from the people who performed the version of music that you want to use. For example, sound recording copyright exists in a pianist's recording of one of Beethoven's sonatas.

You will need to investigate who owns the rights in the music, this may differ depending on whether the music has been published or not. Remember, that if the composer has been dead for over seventy years, then copyright will have expired and there is no need to seek clearance for the composition, but you will need to obtain clearance from the right holder in the recording.

The owners of the rights in the music will also receive performance **royalties** if the music is broadcast as part of the soundtrack to your film.

Published Music

If the piece of music you are intending to use has been published, you should contact the publisher to investigate who owns the rights to the music. It is important to note that many filmmakers spend a large part of their budget on buying the rights to use a certain track or piece of music. Many people make the mistake of thinking that singers/songwriters are in control of their own music and so want to appeal to their artistic temperament and thus obtain the rights to their music for a song. Unfortunately, music is often owned by big publishing and recording companies who rarely have an artistic side to appeal to.

The easiest way round this is to steer clear of famous pieces. Hire a composer or use a local band, which haven't yet been signed to a label - see the next section on original music. Another alternative is to use a piece of library music. Music libraries have a huge number of pre-cleared tracks that you will pay a lot less for than almost any piece of music you will have in your collection. **PRS For Music** (formerly the MCPS-PRS Alliance) has a detailed step-by-step guide to using library music and will administer the licensing process on behalf of its members. Music is licensed according to the rates published in the **production music rate card** - enabling producers to budget accurately.

You should always make sure you can clear a piece of music before it is used in a film. This includes all identifiable background music (e.g. a jukebox in a pub) unless you can prove the use of the music was completely unintentional and therefore 'incidental' to your work. You should be careful when using the term 'incidental' in relation to music. Background music in a film is often referred to as 'incidental music'. However, if that background music is clear and intentionally used in a scene in a film it will not be 'incidental' at all in a copyright sense. You must ensure you obtain the proper clearance for its use.

For published music you will need to obtain a publishing licence from the copyright holder in the piece of music i.e. lyrics and composition. Generally this will be a music publisher. You should contact the latest publisher of the music to investigate who owns the rights.

An easy way to find out who the publisher is, is to look up the record label name on an online music shop such as www.amazon.co.uk or www.play.com or contact **PRS For Music**.

Original Music & Sound Recordings

If the piece of music you wish to use has not been published then the rights holder will most likely be the composer and the author of the lyrics (if applicable). You should apply to them for clearance to use the music in your film. It is likely that this will be easier to obtain where the musicians are unsigned and the music unpublished, not least because your film could be a good platform for the artists to show their work.

If the music has been pre-recorded, then you will need to obtain a recording licence from the rights holder in the recording. This will be either a producer (the person who has arranged for the sound recording to take place) or, more generally, a record company. If the music has not been recorded then you, as filmmaker, could choose to arrange the sound recording yourself (i.e. be the producer), giving you automatic copyright in the recording.

Buyout

Another option when using music in your film is to do a "Buyout" of music, where you pay a one-off fee for use of the music. This means there will be no issue of paying on-going royalties to the rights holders each time the film is shown. This can be licensed directly from the music copyright holder or as **royalty-free** music that can be purchased from certain **royalty free** music companies who hold music libraries of **royalty-free** work such as www.royaltyfreemusic.com

Finding out who owns the rights to music

There is no hard and fast way to find out who owns the relevant rights and obtaining reliable information is often difficult, but the first port of call should always be **PRS For Music**. This organisation looks after titles on behalf of many artists. If you fax/email them a list of the music that you would like to use, they will often be able to tell you who owns it.

Alternatively, if you have the publishing and record companies' names you can also get their contact details from their website or from music directories such as Music Week - www.musicweekdirectory.com

If you do apply to **PRS For Music**(or the relevant music publisher/record company if you are contacting them directly) you should supply them with the following information on the project:

- The name of the company or individual applying for the licence;
- Main contact name and address;
- Main contact number and email address;
- Song title, date of recording (if known) and the sound recording used e.g. EMI;
- Film title and brief synopsis;
- Duration of film;
- Overall film budget;
- Context of music used (scene description);
- Duration of music use (clip or full version);
- Territory of exploitation required e.g. worldwide;
- Rights required e.g. broadcast rights, film festival rights, online right;
- Length of licence required e.g. 2 years.

If your film is working on a tight budget then it would be worth including details as to the background of the project, the key parties involved and any social angle so that licensors may consider the film as a non-commercial project.

When you have a contract drawn up you'll need to check that the terms allow you to use the music everywhere you want to **distribute** your film. The main elements you need to look out for are:

Geographical/Territory: "all world rights" is the ideal, which means that you can show your film anywhere in the world. This often costs more though so it is maybe more cost effective, if you want to use a well-known piece, to specify 'within Europe', or an individual country (e.g. 'in the UK'). Note - if you are considering showing your film online it is best to get 'all world rights' because online in its nature is worldwide.

Time/Duration: in perpetuity (which means indefinitely) is the ideal, but again if you're dealing with well-known musicians or bands then you'll probably get between one to five years.

Media/Platform: Ideally you want 'All Media', but short films will usually start out with 'Festivals' and then look to acquire 'terrestrial TV rights' in various countries. To show your film on BBC Film Network or other websites you need to acquire 'online rights' (note - online rights could mean streaming or download rights or both), Acquiring 'theatrical rights' is where you have to start paying real money (in the hundreds of thousands if you are talking about a named band.)

Exclusivity: Exclusive music deals would be prohibitively expensive so always opt for non-exclusive use.

Promotional use for press and publicity use: ideally you'll want these rights so that you can use clips/trailers with music to promote your film.

Although it is unlikely that you will have budgeted for such fees, another option is to use a company that specialises in clearing copyrights - usually referred to as **music supervision**.

Music Videos/Promos

In music videos the commissioner is the person who **commissions** a music video on behalf of the record label. This person may be an employee of the record label or a freelancer contracted by the record label. The commissioner will hold the copyright for the music video unless he or she is employed by the record label, in which case they will hold the rights. Once the video has been completed the video director usually waives all rights to it. This is indeed a big problem for directors and is one of their greatest grievances, especially with lower budget productions.

Some clauses to look out for in a music video production agreement are as follows:

Delivery Date: The date you have to deliver the video to the record company.

Delivery Materials/Format: This will outline the different formats that you have to deliver the music video in e.g. the master and DVD. Your agreement may also include other delivery requirements such as photo stills.

Artists: The record company will arrange for the artist to attend during the shooting period if required. It is usually the record company who will meet any additional costs incurred by the producer as a result of any failure of the artist to attend at the scheduled time.

Approvals: The record company and the artist/band will have rights to be consulted on and approve the production of the video.

Payment: The record company will pay the producer a production fee to cover production costs of the video.

Licenses: The producer will be responsible for obtaining clearances and licences for all material used in connection with the video

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Warranties: The producer will be asked to give a number of assurances to the record company i.e. that the video will not contain anything which is obscene.

Copyright: The standard position is that the copyright in the video will belong to the record company.

Showreel: Without permission from the record company, the producer is not usually allowed to make use of the video on any showreel until after release by the record company of the relevant single or broadcast of the video.

Don't be dismayed by all the legalities .. there will be someone on hand to point you in the right direction! GFC

<http://www.bbc.co.uk/filmnetwork/filmmaking/guide/before-you-start/music-rights>