

# **The Who What When Where & Why of Music Clearance**

**but not in that particular order!**

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# Before We Begin... a Disclaimer

**“The Who What When Where & Why Of Music Clearance” is not intended to be, and should not serve as a substitute for, legal advice. It is for informational purposes only, and does not create an attorney-client relationship. Users are encouraged to retain professional counsel before acting upon the information provided herein. Additionally, no guarantee or warranty, either express or implied is given with regard to the accuracy of any information provided in this document, and the author shall not be liable for any damages or liability, of any nature whatsoever, arising from the use of the information provided herein. Under Tennessee law, this material may be considered an advertisement. By making use of this document, you agree to the terms of this Disclaimer.**

# What is Copyright?

- Copyright refers to the bundle of rights granted to creators of certain works of authorship, including songs and creative works.
- Copyright attaches automatically to qualifying works. Registration is not required after 1978.
- Copyright grants the creator exclusive rights including the rights to:
  - Perform
  - Make copies
  - Make derivative works

# What is a Song?



**Musical Composition**  
(the lyrics and notes)



**Sound Recording**  
(the recording of  
a performance of  
a musical composition)

# So what is the copyright in a Song?



**Musical Composition**



**Sound Recording**

**It's not a trick question!**

**Each aspect of a Song qualifies for separate copyright protection!**

# Who owns the Copyright in a Song?



## The Musical Composition

**Songwriter(s)**  
**Publisher(s)**



## The Sound Recording

**Performer(s)**  
**Record Label(s)**

# When do you need permission to use a song?

**Whenever you use a song! \***

**\*The small print:**

**There are some instances where a third party may use a copyright protected work without permission from, or compensation to, the owner of the rights.**

**“Fair Use” is an affirmative defense to copyright infringement claims. Consult a copyright attorney before you decide to rely on Fair Use though because the risks are great if the use is not, in fact, fair.**

# Where do you find the © owners?

- **Packaging!**
  - Labels should indicate who, at least initially, owned the copyrights in each element of the song.
  - Be mindful of the source, a Greatest Hits collection is not the best resource. Track down an original source.
- **Online Resources**
  - **Sound Recording**
    - All Music Guide
    - Wikipedia (!!!)
    - SoundExchange (<http://plays.soundexchange.com/>)
  - **Musical Composition**
    - Harry Fox Association maintains Songfile at <http://www.harryfox.com/songfile/public/publicsearch.do>, on which you can find the names of songwriters and publishers/administrators

# Where else can you look?

- ASCAP, BMI and SESAC maintain databases that identify the publisher collecting royalties for the public performances of the songs:  
[www.ascap.org](http://www.ascap.org)  
[www.bmi.com](http://www.bmi.com)  
[www.sesac.com](http://www.sesac.com)
- The Copyright Office has a database that contains all copyright registrations and renewals since 1978 at  
[www.copyright.gov](http://www.copyright.gov)

# Who can help?

- **Music Clearance Services**
- **Music Supervisors**
- **Clearance Attorneys**
- **Music Librarians**
- **Ethnomusicologists**

# What to expect?

- You have to obtain the license to the copyright in both the sound recording and underlying musical composition of the song.
- The royalty for a license to synchronize a song to a video (e.g. a commercial, webisode) can range from free to \$\$\$\$.
- The royalty for a license to use a song with a consumer product can range from 5% to 15% of net sales.

# What else may you have to do?

- You may have to clear the rights for the use of the artist's name and image under Trademark law.
- You may have to get permission from the performers if the use of the song implies endorsement or sponsorship under the Rights of Publicity laws in many states.

# Why Clear a Song?

**Use of a song without permission from the owners of the copyrights exposes you to significant liability!**

**A little bit, or maybe a lot, of research prior to use of a song will protect your investment in, as well as the value the song adds to, your product.**

# For More Information Contact:



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