



HOW TO ACQUIRE MUSIC FOR FILMS

Frequently asked questions for student and independent filmmakers

Q: WHAT LICENSES MUST I GET TO USE A SONG IN MY FILM?

A: If you are using a pre-recorded song or another pre-recorded piece of music in your film, there are two rights you need to clear; that is to say, you need to get two different licenses to use the music.

- Synchronization License: This is the right to synchronize a song or a piece of music with your visual image. It must be obtained from the copyright owner of the music, which is usually the publisher. You can find out who the publisher is by using ASCAP's Clearance Express (ACE) at www.ascap.com. Songs that are not represented by ASCAP might be found at the National Music Publishers' Association "Songfile" website (www.nmpa.org). You will be provided with a contact at the publisher's Business Affairs or Licensing Department.
- Master Use License: This is the right to reproduce a specific recording of a song in your film. You clear this right with the record label who owns the specific recording you would like to use; see the liner notes of the recording to find out which company this is. Alternatively, you can get contact information for record labels by calling ASCAP's Film/TV Department. You will be provided with a contact at the record label's Business Affairs Department.

Q: CAN I USE THESE SONGS ON MY SOUNDTRACK ALBUM?

A: If you intend to use these songs on a soundtrack album, you will need to negotiate additional soundtrack rights with the publisher and record label as you negotiate the synch and master use rights for your film.

Q: WHAT DO LICENSE FEES COST?

A: License fees are determined based on various factors, including how the music will be used, the duration and number of times the music will be used and where the film will be performed. In all cases, the fees are negotiable and not all publishers and record labels charge the same amount. Students working on films that are only shown within an educational environment can often negotiate reduced fees. Independent filmmakers planning to show their films at film festivals can also often negotiate a reduced fee called a Festival Use License. These reduced rates are based on limited screenings of the film. Once the film has been sold for theatrical release, the fees will increase based on the significant increase in viewership and potential increased revenues. It is best to negotiate this increased fee in advance. Negotiating in advance for possible future performances in different types of media (theatrical, TV, cable, internet, etc) is often referred to as a Step Deal.

Q: WHAT INFORMATION SHOULD I INCLUDE IN MY REQUEST FOR MUSIC RIGHTS?

A:

- Submit a synopsis of the film and the film's budget.
- Provide as much detail as possible on how you intend to use the song: main title (opening credit) or end title (closing credit); feature (song is the main focus of the viewers attention) or background (song plays in the background of a scene); number of times the song is used, duration and placement for each use.
- Specify where your film will be screened. For example, is your film a student film being viewed solely in an educational environment? Or is your film an independent film, which will screen at festivals?
- Ask how the fee will increase in the event of possible future performances in different types of media.
- If you are planning on securing soundtrack rights at the same time, ask how that affects your fees.

Q: WHAT ARE THE CONSEQUENCES OF SCREENING THE FILM WITHOUT SECURING MUSIC RIGHTS?

A: U.S. Copyright Law provides that you can be sued by a music publisher and/or record label, for using their property without their consent. Considering that you will work more and more with publishing companies and record labels as your career moves forward, not clearing the rights in advance is not a very professional way of starting your relationships with them. Clearing the rights and having step deals in place will also help you in the event that a distributor is interested in buying your film. If your rights are not cleared, the distributor is looking at an unknown expense tied to your film, and this can be a deterrent in a distributor's interest in acquiring an independent film.

Q: HOW DO I FIND A COMPOSER TO WRITE ORIGINAL MUSIC FOR MY FILM?

A: Music that is composed specifically for a film, as opposed to pre-recorded music placed in a film, is the film score. You can hire a composer to write this music for you. ASCAP works with film composers and composer agents at every level of experience and can help you find a composer appropriate for your film at your budget.

Q: WHAT DO I PAY A FILM COMPOSER?

A: You will be paying a composer an up front fee for writing and recording the music for your film. You will negotiate this fee based on your film budget, the amount of music required, and the film composer's experience in the industry. Again, fees vary significantly, case by case.

Q: WHO OWNS THE FILM SCORE?

A: Based on your negotiations with the film composer, your Composer Agreement will spell out who owns the filmscore (that is, who retains the publisher share of the music). This will either be the production company or the film composer. If the production company pays the appropriate composer's fee up front, it usually retains the publisher share of the music while the composer retains the writer share. In this case, the production company will need to set up a publishing company through ASCAP. When you call us to do this, we can give you further detail. If the production company is unable to pay the composer an appropriate fee up front (as happens often with independent films but never with major releases), a composer will often negotiate to keep the publisher's share of the music. Regardless, as a filmmaker, if your film will have a broader release than at film festivals, you need your Composer Agreement to give certain Broad Rights to the production company: these may include worldwide synchronization; worldwide free, pay, cable and subscription television; in-context and out-of-context television advertising and film trailer use, including promos on other film videos; theater distribution outside the United States; videocassette and videodisc rights; all future technology rights whether now known or not.