

**CREATING THE SOUNDTRACK OF OUR
LIVES: A PRACTICAL OVERVIEW OF
MUSIC LICENSING**

**Buck McKinney, *Austin*
Law Office of Buck McKinney, PC**

State Bar of Texas

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THE SOUNDTRACK OF OUR LIVES

I. INTRODUCTION

Music is sometimes called the “soundtrack of our lives,” and for good reason: we encounter it at almost every turn – from the music we consume (packaged music, radio, streaming), to the music enhancing other products we consume (film, TV), to the music we share with our friends (Facebook and YouTube), to the music we can’t seem to escape (commercials, elevators and on-hold music). For the distributors of these products and services, consent is almost always required. Understanding the types of licenses involved, and the administrators from whom they must be acquired, can be a challenging task, even for an experienced music attorney. This article and the accompanying session will address fundamental concepts involved in music licensing, several common music licensing scenarios, and practical tips for locating rights owners and administrators, and securing the necessary permissions for your clients.

II. FUNDAMENTALS OF MUSIC LICENSING

A key to understanding music licensing is familiarity with the types of intellectual property involved, and the exclusive rights held by copyright owners. These issues are addressed below.

A. Song vs. Recording

One of the benchmark principles of music licensing, and music law in general, is that there are two copyrights involved in any piece of recorded music. The first is the copyright in the *musical composition* embodied in the recording – what we commonly refer to as the “song.” The second is the copyright in the *sound recording* of that “song” – what we sometimes refer to as the “master.”

For example, the sound recording of “Dead Flowers” by the Rolling Stones involves two copyrights: (i) the copyright in the musical composition “Dead Flowers,” which was written by Mick Jagger and Keith Richards, and is owned/administered by ABKO Music Inc.; and (ii) the copyright in the original Rolling Stones sound

recording of “Dead Flowers,” which is owned by the Rolling Stones’ holding company Promotone B.V.¹

As a consequence of the foregoing, the first question you need to ask is whether your client intends to use only a musical composition (in which case you need permission from the owner or administrator of the composition), or whether he intends to use both a musical composition and the sound recording of that musical composition (in which case, you will also need permission from the owner or administrator of the sound recording).

To illustrate, assume that your client wants to record and distribute his own recorded performance of Dead Flowers – what is commonly referred to as a “cover” recording. Because a “cover” recording involves only the use of the musical composition, you would want to contact ABKO Music Inc. for that.

On the other hand, assume that your client wants to include the original Rolling Stones’ recording of Dead Flowers in a film that she is producing. In that case, you would need permission from *both* ABKO, and Promotone, B.V.

To take it a step further, in the film *The Big Lebowski* (which we will talk more about later), music supervisor T-Bone Burnett wanted to use Townes Van Zandt’s recording of “Wild Flowers” (as opposed to the original Rolling Stones’ version) in the film. For that, he needed permission from the publisher, ABKO, and Townes Van Zandt’s record company TVZ Records.

Later in this piece, we will discuss some strategies for finding owners/administrators and requesting permission. But first, we’ll discuss another fundamental component of music licensing – the exclusive rights held by each copyright owner.

¹ Dead Flowers appeared on *Sticky Fingers*, the first album released on the Stones’ independently owned label Rolling Stones Records and was licensed to Atlantic Records. Ivan Sheehan, *10 Things You Might not have Known about the Rolling Stones’ “Sticky Fingers,”* (Oct. 9, 2013), <https://www.rockhall.com/10-things-you-might-not-have-known-about-rolling-stones-sticky-fingers>. The holding company for the recordings appearing on *Sticky Fingers* (and all other post-1970 Stones albums) is Promotone, B.V., but rights are administered by a company called Inaudible Productions in Los Angeles. See also *infra* Section IV.

B. Exclusive Rights held by Copyright Owners

The Copyright Act currently secures six exclusive rights to the owner of a copyright. Section 106 of the Act provides as follows:

[T]he owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

As it applies to music, these rights can be illustrated as follows:

- Reproduction (such as the manufacturing of records, printing sheet music, etc.).
- Distributing (usually goes hand in hand with copying – includes the distribution of records and sheet music, etc.).
- Derivative works (such as musical arrangements, ringtones, etc.).
- Display (such as display of lyrics in a church service, etc.).
- Performance of *musical compositions* (including radio airplay, streaming, TV broadcast, “Muzak,” etc.).
- Performance of *sound recordings* (more limited than compositions – covering only “digital performances,” such as webcasting, streaming and “Muzak”).

Note the difference between the performance rights in musical compositions, and the performance rights in sound recordings. Whereas musical compositions enjoy a broad performance right, the performance right in sound recordings is limited to *digital* performances.

In general, sound recordings have been accorded a somewhat bizarre treatment in the United States. Indeed, they weren’t protected *at all* under U.S. Copyright Law until 1972 (covering works from February 15, 1972 forward).² That, however, didn’t mean they weren’t protected (or that pre-1972 works have no protection now). To the contrary, common law protection, and statutory protection, exists under some state laws, and rights holders have relied on those laws to protect their rights in pre-1972 recordings. However, this dual regime further complicates, and some would argue frustrates,³ licensing issues.

For instance, as discussed below, the U.S. has a collective from which a non-interactive streaming service can obtain a statutory license to perform post-1972 recordings. But what about pre-1972 recordings? The uncertainty of that question has led to a series of lawsuits, with conflicting results.⁴ There may finally be

² Under the act, sound recordings received no public performance rights; rather protection was “limited to the right to duplicate the sound recording in a tangible form that directly or indirectly recaptures the actual sounds fixed in the recording.” Pub. L. No. 92-140, § 1(a), 85 Stat. 391, 391 (1971). This was largely a result of the effectiveness of the lobbying efforts by broadcasters, who argued that radio play actually helped to sell records, and there should therefore be no requirement to pay for performances. Steve Gordon & Anjana Puri, *The Current State of Pre-1972 Sound Recordings*, N.Y.U. JOURNAL OF INTELLECTUAL PROP. & ENT. LAW (2015), <https://jipel.law.nyu.edu/vol-4-no-2-5-gordonpuri/>.

³ See, e.g., Tim Brooks, *Only in America: The Unique Status of Sound Recordings under U.S. Copyright Law and How It Threatens Our Audio Heritage*, American Music 2, (Summer 2009) (discussing the common law and statutory law regime).

⁴ Early battles seeking to enforce a pre-’72 performance right in sound recordings were successful. For instance, the RIAA lawsuit against Sirius was settled for \$210 million in 2015. Joe Mullin, *Sirius XM agrees to pay \$210M for playing pre-1972 songs*, ARS TECHNICA (June 26, 2015), <https://arstechnica.com/tech-policy/2015/06/sirius-xm-agrees-to-pay-210m-for-playing-pre-1972-songs/>. However, in later cases, the courts in two states rejected the argument that performance rights are protected under state common law. Joe Mullin, *Florida’s top court stops 1960s band from* (cont’d)

a solution to that problem now that the House and Senate have passed the Music Modernization Act (“MMA”).⁵ The MMA includes provisions that will allow digital radio services to perform pre-72 sound recordings under the same statutory license terms applied to sound recordings made after 1972, or under a direct licensing agreement with the copyright holder.⁶

III. COMMON LICENSING SCENARIOS

The following section will cover common licensing scenarios that you may be called upon to address, including public performance licenses, mechanical licenses, synchronization licenses and master use licenses. Subsequent sections will address research issues, and other challenges.

A. Public Performance Licenses

Under the U.S. Copyright Act, to “perform” a work is to “recite, render, [or] play ... it either directly or by means of a device or process.”⁷ Examples run the gamut from a live act performing at a music club, to radio broadcasts, to music performed in the background of a television program, to “web-casting” (the digital dissemination of terrestrial radio programs), to so-called “elevator music.”

Public performance rights are unique in that they are typically administered by “collectives” representing the interests of hundreds of thousands of participants – including songwriters and publishers (on the musical composition side) and record companies and performers (on the sound recording side). This is a direct consequence of the huge number of businesses that exploit music by way of

(cont'd from previous page)

earning pre-1972 copyright royalties, ARS TECHNICA (Oct. 26, 2017), <https://arstechnica.com/tech-policy/2017/10/the-turtles-lose-their-final-fight-for-pre-1972-copyright-cash/>.

⁵ The Music Modernization Act passed unanimously in both the House and Senate, and as of this writing, needs only to go back to the House for approval of changes made by the Senate, and then to the President’s desk for signature.

⁶ See Protecting Sound Recordings Made Before 1972, SOUND EXCHANGE, <https://www.soundexchange.com/advocacy/pre-1972-copyright/>.

⁷ 17 U.S.C. § 101 (2019).

public performance, and the inherent inefficiency of trying to police that activity on a rights-holder by rights-holder basis.

In the U.S., the performance rights in musical compositions are administered primarily by three organizations: the American Society of Composers, Authors and Publishers (“ASCAP”), Broadcast Music Inc. (“BMI”), and the much smaller Society of European Stage Authors and Composers (“SESAC”).⁸ Not only is the membership of these organizations large, their licensee base is also. Together, they offer licensing to all of the radio stations, television stations, restaurants, bars, hotels and webcasters in the U.S., and do so by way of “blanket licensing” that allows each licensee to perform every work in the PRO’s catalogue in return for an annual fee.

On the sound recording side, there is only one organization in the U.S. collecting performance royalties – SoundExchange. Like the performance rights organizations (“PRO’s”) discussed above, SoundExchange provides blanket licensing for all of the works in its repertoire, but only for *digital* performances (for instance, webcasts, digital background music services, and the like).⁹ Moreover, as discussed above, SoundExchange licenses the rights only for sound recordings from February 15, 1972 forward.

If you run into a situation involving a blanket licensing agreement from one of the PRO’s, it is likely to involve a local proprietor such as a club or restaurant owner being approached by BMI, ASCAP or SESAC to become licensed (these organizations aggressively pursue unlicensed businesses). If so, there are a few things to keep in mind. First, so long as the establishment is performing music that is not simply a retransmission of a radio or television broadcast, a license *is required*. However, the converse may also be true.

⁸ An even smaller invitation-only organization started by Irving Azoff in 2013 called Global Rights Management administers the catalogues of 85 artists (as of early 2018), including Bruce Springsteen and Prince. *See No. 4: Irving Azoff Power 100*, BILLBOARD, (2018), <https://www.billboard.com/articles/business/8096127/no-4-irving-azoff-power-100>

⁹ SoundExchange collects royalties and distributes them directly to record companies, and featured and non-featured artists, for the non-interactive use of sound recordings under statutory licenses set forth in 17 U.S.C. §§ 112, 114 (2019).

Under the so-called “Homestyle Exemption,” a proprietor that is simply using a radio or television for background music is not required to obtain a license – so long as the establishment is small and/or the public address system is not particularly sophisticated; and provided that certain other conditions are met.¹⁰ I have seen small business owners that fell within this exemption being approached for a license, so it is important to keep the exemption in mind. For example, an average hair salon with KUTX on in the background should *not* have to pay a fee (after all, the radio station is already paying fees to the PRO’s for the broadcast).

Second, pay attention to the formula for calculation of license fees. For instance, ASCAP’s license is predicated on a combination of occupancy, the manner in which music is performed (live, recorded, radio), and whether a cover charge is imposed.¹¹ Make sure that the information used to calculate the fee is accurate.

Finally, as a practical matter, advise your clients of existing background music services – such as those provided by Sirius, Pandora and Austin-based Mood Media, which as of the date of this article, offered background music for businesses at a monthly fee of \$24.95, \$26.95 and \$34.95 respectively – *including all royalties due to the PRO’s* (for the musical composition, as well as the sound recording).

B. Mechanical Licenses

A mechanical license permits the reproduction and distribution of recordings of musical compositions and is obtained from the publisher(s) or

administrator(s) of the composition.¹² The term “mechanical reproduction” originated with music boxes, piano rolls, and early phonograph records – all of which utilized some form of mechanical process to reproduce music (hence the term “mechanical”). The right of a copyright owner to control “mechanical” reproductions of his or her compositions was first introduced by Congress in 1909. The mechanical right was subsequently expanded to cover other “mechanical” reproductions, such as tapes and CDs. Today, the term also covers permanent digital downloads, interactive streaming and other digital configurations.¹³

When Congress passed legislation recognizing that mechanical reproductions were part of the owner’s exclusive bundle of rights, it also sought to level the playing field for companies seeking to distribute music. Concerned that the Aeolian Company was cornering the market on piano rolls by entering into exclusive arrangements with publishers, Congress implemented the first “compulsory license” statute, providing that once a copyright owner authorized the commercial reproduction and distribution of his work, anyone could obtain a license to mechanically reproduce and distribute the work by paying 2 cents per copy – the so-called “statutory rate.” This scheme survives to this day in Section 115 of the U.S. Copyright Act.

Due to the burdensome monthly accounting requirements set forth in the statute, hardly anyone uses the compulsory mechanical license provision to obtain a license, and most are negotiated. Nevertheless, the statutory rate (currently 9.1 cents per copy) tends to set the market rate for arms-length negotiations between unrelated parties. For this reason, the “unreasonable negotiating partner” problem discussed in Section V(B) below usually isn’t an issue.

A simple form mechanical license providing for limited manufacturing and distribution is attached

¹⁰ The Homestyle Exemption provides a broad exemption for food service and drinking establishments that are less than 3,750 square feet, and non-food service/drinking establishments smaller than 2,000 square feet, so long as there is only one receiving apparatus involved, the original broadcast emanates from an FCC licensed entity, and no direct charge is assessed to customers to see or hear the transmission. For establishments that fall outside of the broad exemption, the statute limits the size and sophistication of the establishment’s equipment in order to fit within the exemption. See 17 U.S.C. § 110(5) (2019).

¹¹ See ASCAP application, **Attachment A**.

¹² In some instances, a songwriter may administer his own publishing, in which case you would need to approach the songwriter directly, but this is by far the exception – particularly with popular music.

¹³ See U.S. Copyright Office, Circular 73, *Compulsory License for Making and Distributing Phonorecords*, (2018), <https://www.copyright.gov/circs/circ73.pdf> (Congress amended section 115 of the Copyright Act in 1995 to include “digital phonorecord deliveries,” commonly referred to as DPDs, as part of the Digital Performance Right in Sound Recordings Act of 1995 (“DPRA”))

hereto as **Attachment B** for illustration purposes. That said, it is worth noting that most individuals, and many record companies, utilize a “collection service” to obtain mechanical licenses. The largest in the U.S. is the Harry Fox Agency, which represents most U.S. publishing catalogues, and is authorized to issue mechanical licenses at the statutory rate.¹⁴

C. Audiovisual Uses

(1) Licensing the Composition

A “synchronization license” authorizes the licensee to synchronize a musical composition with an audiovisual work such as a motion picture, television program or promotional music video, and is derived from the copyright owner’s exclusive right of reproduction. Although you will occasionally see the same term applied to the license of a sound recording for use in Film and TV, more often that license is referred to as a “master use” license (and is discussed in Section III(C)(3) below).

Where the use sought by the licensee is for film or TV, a synchronization license will usually be quoted on a flat fee basis. Where it involves the distribution of copies (such as a DVD), the license may contain provisions for payment of royalties with regular accounting (although film companies typically resist this, insisting on a buyout of the reproduction right). Forms reflecting both scenarios are attached.¹⁵

Under a 1948 court case,¹⁶ and a subsequent amendment of a consent decree entered into by ASCAP and the Department of Justice, the societies are not allowed to issue performance licenses to U.S. movie theaters (contrary to the practices outside the U.S., where theaters are typically licensed by the local PRO). For that reason, U.S. synch licenses almost invariably include both the right to “synchronize” the composition with the audio-visual work, and

authorization to “perform” the composition in U.S. theaters.¹⁷

Fees for synchronization licenses can range from a few hundred dollars for short independent films to six figures for the right song in the right motion picture. Factors driving the fee include the length of the use, whether it is background music or used in the “foreground” (e.g., a character singing the song), whether the licensee seeks broad rights (all media, worldwide, in perpetuity), or more limited rights (such as film festival). Due to these numerous factors, it is very difficult to state an “average fee” for a synch license – it really does depend on circumstances.

Another note of caution – being overly aggressive in negotiations can backfire. Music supervisors working on films and TV shows have thousands of songs to choose from, and usually have several songs in mind for each use. If an administrator is too aggressive, the music supervisor will likely move to the next candidate. Moreover, the administrator must keep in mind that the synch license is only part of the equation. Performance fees for television broadcast and overseas theatrical performances can equal or exceed the synch fee, and none of that money is earned when a music supervisor moves to the next song.

In some circumstances, it may be appropriate to include a “most favored nations” clause, providing that the licensor will receive the benefit of any better terms negotiated with other rights holders. However, because the use of music in films and TV varies dramatically (from featured foreground uses, to incidental background uses), the clause does not work well in those projects and will almost always be rejected by the producer. However, it may be totally appropriate for a concert video, where all songs would typically be on more equal footing.¹⁸

a. Film Festival Licenses

Independent filmmakers seldom have the budget to pay thousands of dollars in synch fees, and typically seek a “festival only” license, or a “step deal” allowing them to exhibit the film for free or a heavily discounted rate at film festivals, with increased fees in the event

¹⁴ See *Simplify and Streamline Music Rights & Royalties*, THE HARRY FOX AGENCY (2019), <https://www.harryfox.com>. A sample form for opening up an account with HFA is appended as **Attachment C**.

¹⁵ See **Attachments D** and **E**.

¹⁶ Alden-Rochelle, Inc. v. ASCAP, 80 F. Supp. 888 (S.D.N.Y. 1948).

¹⁷ See **Attachment D**.

¹⁸ See **Attachment E** for an example of a “most favored nations” clause.

that the film is picked up for theatrical distribution.¹⁹ This can be a win-win for both parties, whereby each enjoys the possibility of wider success should the film become popular.

(2) Licensing the Master

As indicated above, if your client intends to use a prerecorded composition in his film or TV project, then in addition to the synch license from the administrator of the musical composition, you will need a “master use license” from the administrator of the sound recording. In general, the structure of these agreements is similar to a synch license in that it will usually be based on a flat fee. An important difference is that there is no performance income related to exhibitions on television and in foreign theaters (due to the limited performance right in sound recordings discussed above). For that reason, a good argument can be made for a larger fee than is being paid to the publisher/songwriter.

In some instances – particularly in commercials – you may notice that a familiar song sounds “different.” This may be because the producer decided to use a “sound alike” – that is, a different version of the song, recorded by studio musicians – in order to avoid paying what may have been an exorbitant quote from the record company owning the original master. In general, the law permits this. However, there have been cases where a distinctive voice has been so thoroughly replicated that it invited a lawsuit involving different intellectual property rights – specifically, name and likeness rights. In a pair of landmark cases in the 80’s and 90’s, both Tom Waits and Bette Midler won lawsuits on that basis.²⁰

(3) Use of Music in YouTube and Facebook Videos

Like other audiovisual uses of music, authorization is required for the use of music on YouTube and social media sites like Facebook.

¹⁹ See David G. Powell, *Limited Music Rights Strategies for Filmmakers*, www.themusicbridge.com/clearance-and-license/limited-rights-strategies-for-filmmakers.

²⁰ See Nick Keppler, *When Tom Waits Sued Frito-Lay Over a Doritos Ad*, MENTAL FLOSS (May 7, 2016), <http://mentalfloss.com/article/79648/when-tom-waits-sued-frito-lay-over-doritos-ad>.

Unlike most other platforms, YouTube and Facebook have preexisting agreements with rights holders that may allow your client to use the music for free.

For years, YouTube has had a list of pre-cleared musical compositions and sound recordings, some of which allow the user to utilize the works with no compensation, and some of which allow the owner(s) of the rights therein to derive ad revenue from the user’s YouTube page featuring the work.²¹

Facebook has also recently gotten into the game, and is rumored to be positioning itself to allow its users to make “social” use of music in an effort to compete with youth-oriented platforms such as Musical.ly (which allows users to make short lip-synch videos over their favorite songs). From late 2017 through mid 2018, Facebook cut deals with the 3 major record labels, several major publishers, and several independent labels and independent label consortiums for the use of their catalogues.²² Details are still sketchy as to how users will be able to use the materials,²³ but like YouTube, Facebook has for some time had a list of pre-cleared works (mostly by independents) that can be used for free. It will be interesting to see how Facebook incorporates the wider catalogue, and the uses that will be allowed of them.

IV. RESEARCHING ADMINISTRATION AND OWNERSHIP

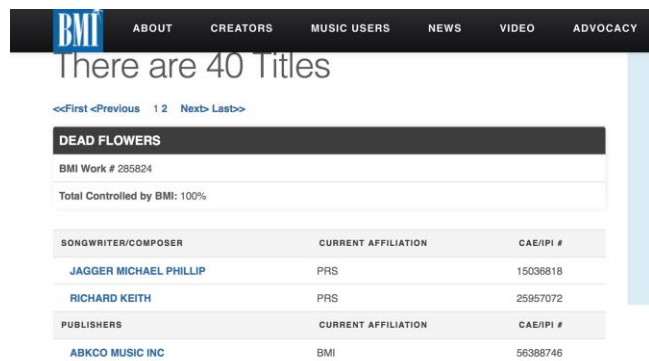
After finding out how your client wants to use a musical work, your next job will be to find the owners/administrators. This can be a time-consuming process, but several resources are available.

²¹ See <https://www.youtube.com/audiolibrary/music?o=U&ar=1>

²² The deals will reportedly allow for use of music on Facebook, Instagram, Facebook Messenger and Oculus VR. See Amy Wang, *A decade after destroying Myspace, Facebook is bringing music back into social networking*, QUARTZ, (March 9, 2018), <https://qz.com/1225652/facebook-has-music-deals-with-every-major-record-label-now-why/>.

²³ An early roll-out called “Lip Sync Live” goes head-to-head with Musical.ly, providing a platform for people to make short lip synch videos with pre-cleared music. See Josh Constine, *Facebook allows videos with copyrighted music, tests Lip Sync Live*, TECHCRUNCH (June 5, 2018), <https://techcrunch.com/2018/06/05/facebook-lip-sync-live/>.

When searching for a publisher/administrator, the first place I generally start is at the PRO's. ASCAP, BMI and SESAC all have repertoire search engines that will provide you with the name of the publisher/administrator reflected in their records. For example, a search of BMI's repertoire returns the following result for Dead Flowers:

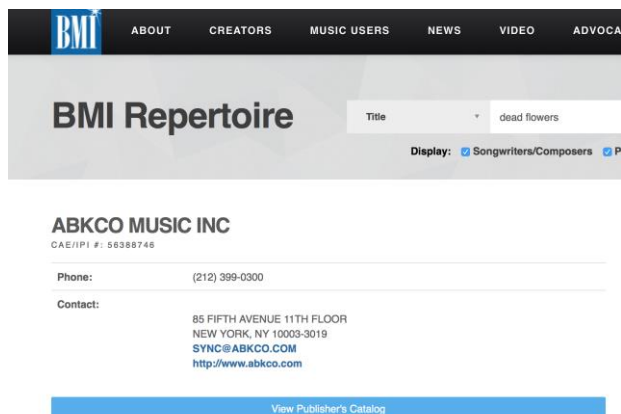


The screenshot shows the BMI website interface. At the top, there is a navigation bar with links for ABOUT, CREATORS, MUSIC USERS, NEWS, VIDEO, and ADVOCACY. Below the navigation bar, a search result for "DEAD FLOWERS" is displayed. It includes the BMI Work # 285824 and states "Total Controlled by BMI: 100%". Below this, there are two tables. The first table lists the songwriters/composers and their current affiliations and CAE/PI #. The second table lists the publishers and their current affiliations and CAE/PI #.

SONGWRITER/COMPOSER	CURRENT AFFILIATION	CAE/PI #
JAGGER MICHAEL PHILLIP	PRS	15036818
RICHARD KEITH	PRS	25957072

PUBLISHERS	CURRENT AFFILIATION	CAE/PI #
ABKCO MUSIC INC	BMI	56388746

Clicking on ABKO Music Inc. brings up the following result:



The screenshot shows the BMI Repertoire search results for ABKCO MUSIC INC. The search criteria include the title "dead flowers" and the display options are set to "Songwriters/Composers". The contact information for ABKCO MUSIC INC is provided, including the phone number (212) 399-0300 and the address 85 FIFTH AVENUE 11TH FLOOR, NEW YORK, NY 10003-3019. The website also provides the email address SYNC@ABKCO.COM and the URL http://www.abkco.com.

The U.S. Copyright Office also has a database that can be searched, and if you are using Harry Fox, the search function is built-in.

For masters, I often start with Amazon. If it is a recording that is available, Amazon will generally list the copyright owner, as reflected in the screenshot below for the Rolling Stones' "Dead Flowers":

Product details

Original Release Date: April 23, 1971

Release Date: August 18, 2009

Label: Rolling Stones Catalog

Copyright: ©© 2009 Promotone B.V., under exclusive licence to Universal International Music B.V.

However, the information on Amazon isn't always complete – in fact, it is prone to being incomplete because it lists the designated distributor *at the time of initial release*. Nevertheless, it can often provide a “starting point” for your research.

In the case of Dead Flowers, as discussed above, Promotone is the Dutch holding company for the Rolling Stones, but my guess was that Universal administered (and besides, I couldn't find any contact information for Promotone). As it turned out, Universal *did* administer the rights at one time, but I was advised that the master rights are now administered by a company called Inaudible Productions in Los Angeles, CA. In all, it took 3 days and 6 emails to get to that answer.

V. OTHER CHALLENGES, AND HOW TO DEAL WITH THEM

A. Split Copyright Ownership

In many cases, there may be two or more entities that administer a share of the same composition.²⁴ Usually, this happens when there are multiple writers, each of which has his or her own publishing administrator. The problem is not as acute in the U.S., where copyright law dictates that a co-owner may unilaterally grant non-exclusive licenses for the whole composition, subject to the duty to account to his or her co-owners for their share. Thus, if your client is seeking only the right to copy and distribute recordings in the U.S., it may be acceptable to obtain permission from only one owner/administrator. However, even here caution is urged, as there are some situations that fall outside the rule.²⁵ Moreover, if your client intends to distribute the recording outside the U.S., foreign copyright laws will apply, many of which require consent from every co-owner.²⁶

Several practical issues can arise from split copyright ownership. For instance, while you may obtain consent from one co-owner on acceptable terms, a second may fail to respond; or quote an impossible fee; or simply say no. And Heaven forbid you have already

²⁴ Theoretically this could happen with sound recordings also, but it is far less common than with respect to musical compositions, where the issue has vexed those seeking song clearances for years. See Al Kohn & Bob Kohn, KOHN ON MUSIC LICENSING 329-44 (4th ed. 2009).

²⁵ Some courts have held that one co-owner may not unilaterally grant a license that effectively destroys the value of a copyright, throwing the rule into some uncertainty. *Id.* at 332.

²⁶ *Id.*

paid one co-owner, only to learn that another will not consent on reasonable terms, if at all.

Due in large part to the issue of split copyright ownership, clearance companies that have developed a proficiency at clearing music rights have proliferated. In some instances, it may be beneficial for your client to seek the help of one of these companies rather than paying your hourly fee to hunt-down and attempt to negotiate acceptable terms with each co-administrator.

B. The Unreasonable Negotiating Partner

What if the person with whom you are negotiating simply will not provide a reasonable quote for the use. For this problem, we refer once again to The Big Lebowski, and call upon “the Dude” for advice.

When T-Bone Burnett was attempting to license the use of Dead Flowers for The Big Lebowski, Alan Klein – the notorious ex-manager of the Rolling Stones who administers the copyright (through his company ABKO, Inc.), quoted \$150,000 – a budget buster. Burnett reportedly begged Klein to preview an early cut of Lebowski, thinking he might cajole him into providing a better quote. Klein agreed, and according to Burnett “It got to the part where the Dude says, ‘I hate the fuckin’ Eagles, man!’ Klein stands up and says, ‘That’s it, you can have the song!’ That was beautiful.”²⁷

Sometimes deals have to be made after the fact, making negotiating even more challenging. In 1997, Puff Daddy did a tribute to slain rapper Christopher “The Notorious B.I.G.” Wallace called “I’ll be Missing You.” The song interpolated the hit “Every Breath You Take” by the Police – a circumstance that A&M Records did not learn until the day the song was released. As part of the settlement of its valuable claim for infringement, A&M negotiated a deal whereby Puff Daddy – whose career was sailing while Sting’s was not – would produce a remix of the Police single “Roxanne” – called “Roxanne ‘97.”²⁸ I was a

young lawyer working in business and legal affairs at A&M at the time, and recall being astounded at how quickly the negotiations were concluded. By the afternoon of the release of “I’ll be Missing You,” it was done.

Ultimately, the Puff Daddy deal did not work as well as anticipated. Instead, it took a *subsequent* license of Sting’s song “Desert Rose” in a Jaguar commercial in 1999 to reignite his career – demonstrating just how important a licensing opportunity can be. Negotiated by Sting’s manager Miles Copeland, the Jaguar commercial was one of the first cross-branding deals in the music business - leveraging Jaguar’s \$8 million dollar ad campaign to market a single with an original promotional budget of \$1.8 million (including \$800,000 for the video, which was ultimately transformed into the commercial).²⁹ In return, Sting’s publisher and A&M Records licensed the track to Jaguar *for free*. The results were impressive. Forecasted by A&M to sell 1 million copies, Sting’s Album “Brand New Day” went on to become his biggest seller at 4 million copies, and “Desert Rose” found airplay on over 180 US Top 40 stations.³⁰

The moral of the story: the fee isn’t always the golden ring, and creativity can go a long way in creating a “win-win” result.

VI. SUMMARY

In the changing landscape of the music industry, the business models, licensing protocols and contracts for music licensing are ever-evolving. The Music

(cont'd from previous page)

composition “I’ll be Missing You.” See Dave Lifton, *STING EARNS \$2,000 A DAY BECAUSE PUFF DADDY DIDN’T SAY ‘PLEASE’ BACK IN 1997*, ULTIMATE CLASSIC ROCK (Jan. 7, 2014) <https://ultimateclassicrock.com/sting-puff-daddy-2000-a-day/>.

²⁹ Scott Donaton, *THE STORY BEHIND A LANDMARK MUSIC COMMERCIAL: How Miles Copeland Brought Sting and Jaguar Together*, ADAGE (Sept. 22, 2003). Reportedly, the video called for Sting to be driven across the desert, and the director decided to use a Jaguar. When Copeland saw the video, he is said to have exclaimed “it’s a commercial!”, and immediately set about striking a deal with Jaguar. In today’s environment where cross-branding is the norm, this may not seem so unusual, but at the time, it was novel, and helped to revolutionize the way music is marketed.

³⁰ *Id.*

²⁷ Andy Green, *Inside the Dude’s Stoner Soundtrack*, Rolling Stone (Aug. 28, 2012), <https://www.rollingstone.com/music/music-news/inside-the-dudes-stoner-soundtrack-187983/>. The line apparently infuriated Glenn Frey, as recounted by Jeff Bridges: “I ran into [Frey] and he gave me some shit ... I can’t remember what he said exactly, but my anus tightened a bit.” *Id.*

²⁸ Sting’s publishing company reportedly made a deal whereby it acquired a majority interest in the musical
(cont'd)

Modernization Act in particular is poised to create sweeping changes – by closing the pre-1972 loophole for performance rights in sound recordings, and implementing a blanket licensing system and a new collections organization targeted at interactive streaming services and DPD delivery platforms. It is beyond the scope of this article to delve into all of those nuances, but hopefully, the fundamentals and examples discussed herein will help the new practitioner better appreciate these changes and adapt with them.

ATTACHMENT A



RESTAURANTS, BARS, NIGHTCLUBS, AND SIMILIAR ESTABLISHMENTS
Rate Schedule & Statement of Operating Policy for Calendar Year 2017

Licensee Business Name: []
Premise Address: []

Instructions: Enter the corresponding Rate Per Occupant according to the use of music in your business

Table with columns: Music Type, Rate Per Occupant, Fee. Rows include: 1. Live Music (Frequency Per Week: 4-7 nights \$5.98, 3 nights or less \$4.99), 2. Recorded Music* (If Live Music is not used \$3.49, If Live Music is also used \$2.31), 3. Enhancements to Recorded Music* (\$2.01), 4. Admission or Cover Charge* (\$2.01), 5. Television and/or Radio* (\$1.32), 6. Total Rate Per Occupant (Add lines 1 - 5), 7. Total Premises Occupancy (Formula: Total Square footage of entire premise / 20 = Occupancy), 8. Occupancy Fee (A. Multiply line 7 by line 6. 8a \$, B. Enter the amount from line 8a, or \$372.00, whichever is higher. 8b \$), 9. Jukebox Fee* (\$175.00), 10. Annual License Fee (Add the amounts from Boxes 8b and 9).

*See notes on Page 2 for explanation

I certify that the information contained herein is true and correct. (complete only upon change in Operating Policy

Signature: _____ Date: _____
Name: _____

Print Name



NOTES TO RATE SCHEDULE

Recorded Music (Line 2). This fee applies for the performance of music by mechanical or electronic devices, including, but not limited to, tapes, records, compact discs and other digital audio formats (e.g. MP3), videocassette, DVD and other digital audiovisual formats. This fee applies for performances by jukeboxes that do not meet the definition of "Coin-Operated Phonorecord Player" as defined below.

Enhancements to Recorded Music (Line 3). This fee applies for the use of added features to recorded music such as, but not limited to, karaoke, DJs, emcees, dancing, shows, acts or games.

Admission or Cover Charge (Line 4). This fee applies if an admission, cover, or similar charge exists at any time for a part or the entire premises.

Television and/or Radio (Line 5). The use of televisions and/or radios that are utilized for the reception of broadcast, satellite or cable programming when no live music (Line 1) or recorded music (Line 2) is performed and paid for under this license, and when such television and/or radio performances do not meet the exemption provided for in 17 U.S.C. Section 110(5).

Jukebox Fee (Line 9). This fee applies for performances by means of devices, commonly called "jukeboxes," that meet the definition of "Coin-Operated Phonorecord Player" as set forth in the U.S. Copyright Law and that are not otherwise licensed through a compulsory license, a license from the Jukebox License Office, or an ASCAP license other than this license. The U.S. Copyright Law currently defines a Coin-Operated Phonorecord Player as a machine or device that (1) is employed solely for the performance of nondramatic musical works by means of phonorecords [compact discs, for example] upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent; (2) is located in an establishment making no direct or indirect charge for admission; (3) is accompanied by a list comprised of the titles of all the musical works available for performance on it, and is affixed to the machine or device or posted in the establishment in a prominent position where it can be readily examined by the public; and (4) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located [as distinguished from the establishment's employees or performers].

ADJUSTMENTS TO ANNUAL FEES

FEES FOR SEASONAL PERFORMANCES

If the Premises is only open seasonally, the fees due for periods up to four (4) months of operation are one-half (1/2) the annual license fees (Line 10). For each additional month or partial month the fee is increased by one twelfth (1/12) the annual license fees (Line 10). In no event shall the seasonal performances be more than the annual license fee (Line 10) or less than \$372.00, if any boxes in Sections 1-5 are checked, or less than \$175.00, if only the box in Section 9 is checked.

FEES FOR OCCASIONAL PERFORMANCES

For policies in effect for any three (3) or fewer days/nights per month, the annual fee is the applicable annual fee for the policy as if such highest policy were in effect for three (3) or less days/nights per week. For policies in effect for any six (6) or fewer days/nights per calendar year, the fee is one-third (1/3) the applicable annual fee for the policy as if such policy were in effect for three (3) or less days/nights per week. In no event shall the occasional performances be less than \$372.00, if any boxes in Sections 1-5 are checked, or less than \$175.00, if only the box in Section 9 is checked.

DISCOUNTS

One Year Payment

Full payment of applicable annual license fees (Line 10) upon the execution of the Agreement, but no later than thirty (30) day of invoice, and for subsequent terms no later than thirty (30) days after the anniversary date of the Agreement entitles Licensee to a 10% discount on such annual license fees.

Two Year Payment

Full payment of applicable annual license fees (Line 10) for two (2) years upon execution of the Agreement, but no later than thirty (30) day of invoice, and for subsequent terms no later than thirty (30) days after the anniversary date of the Agreement entitles LICENSEE to a 15% discount on such aggregated two-year annual license fee payment. For purposes of calculating the two-year payment, fees for the second year shall equal the fees for the first year (Line 10) but shall be subsequently adjusted upon the release of the second-year rates.

LICENSE FEES FOR 2018 SEASON AND THEREAFTER

The license fees for each calendar year commencing 2018 shall be the license fee for the preceding calendar year, adjusted in accordance with the increase in the Consumer Price Index, All Urban Consumers - (CPI-U) between the preceding October and the next preceding October.

ATTACHMENT B

MECHANICAL LICENSE AGREEMENT

THIS AGREEMENT is made as of the ___ day of ___, 20___, by and between _____ at [ADDRESS] (“Licensor”) and _____ at [ADDRESS] (“Licensee”).

COMPOSITION: “ _____ ”
COMPOSER: _____
PERFORMER: _____
PLAYING TIME: _____
ALBUM: _____
DATE OF RELEASE: _____
RATE: \$ 0.91
COPIES: _____
TOTAL: _____

Licensor hereby grants to Licensee the non-exclusive license to use the COMPOSITION in (1) the recording and making of up to _____ phonorecords to be distributed in the U.S. It is agreed that, in the event Licensee produces more than _____ phonorecords, the consideration for such licenses shall be the so-called statutory rate in effect at the time such phonorecords are manufactured and distributed, and Licensee shall account to Licensor quarterly for such sales, on the fifteenth (15th) day of February and August for the semiannual periods ending on the last day of December and June, respectively.

This license is limited to the particular recording(s) and use(s) of the COMPOSITION set forth herein and shall not include any other recording or form of recorded sound.

Failure to render timely accountings or make timely payments to Licensor shall constitute a material breach of this license entitling Licensor, in addition to its other remedies, to immediately terminate this license and all rights granted to Licensee hereunder. Such termination shall render the making or distribution, or both, of all phonorecords for which royalties have not been paid actionable as acts of infringement under, and fully subject to, any and all remedies provided by law. A waiver of any breach hereunder shall not constitute a waiver of any succeeding breach, whether similar or dissimilar. Upon written request, Licensee agrees to make its books and records relating to the subject matter hereof available for audit by Licensor and/or Licensor’s designee(s) and Licensor shall have the right to make copies thereof.

Manufacture and distribution of phonorecords hereunder shall be limited to the U.S. only.

Licensee agrees that any and all phonorecords manufactured by it under this agreement shall bear in the packaging thereof a printed writer/publisher credit and copyright notice in a form reasonably necessary to protect writer/publisher(s)’ rights in the copyrighted work.

Fees and copies of all notices and/or accountings hereunder shall be sent to Licensor at the address set forth above.

This license is personal, non-licensable and non-assignable, except by Licensor. This license does not supersede nor affect any prior licenses or agreements now in force respecting recordings of the COMPOSITION. This license shall be governed by and construed under the laws of the State of Texas, U.S.A.

AGREED AND ACCEPTED:

LICENSOR

LICENSEE

By: _____
An Authorized Signatory

By: _____
An Authorized Signatory

Lo/mechlic

ATTACHMENT C



APPLICATION FOR HFA LICENSING ACCOUNT

This form is to create a licensing account with HFA for the manufacture and distribution of CDs, Audio Cassettes, LP s, DPD’s, Ringtones etc. within the U.S. If you are interested in licensing music represented by HFA for lyrics, tablature, digital jukeboxes, background music and other digital uses, please contact Newmedia@harryfox.com and describe your proposed digital use.

1. GENERAL CONTACT INFORMATION

Name of Company: _____ Contact Person: _____

Address: _____ City: _____ State: _____ Zip: _____

(No P.O. Boxes; must be a street address. If a rural address, we need street address plus P.O. Box) Country: _____

Telephone #: _____ Fax#: _____

E-mail: _____ Website: _____

Is your company affiliated with any other HFA accounts? _____ If yes, please list the account names and numbers

2. PRELIMINARY RELEASE INFORMATION

Anticipated Quantity of Units: _____ over 2,500 (See section 3 below)
_____ 25 - 2,500 (For mechanical licenses in a quantity of 25 to 2,500 units,
Please use Songfile. Visit <http://www.harryfox.com/public/songfile.jsp> for
more information.

3. ADDITIONAL INFORMATION ON ACCOUNTS RELEASING 2,500+ UNITS

Please provide full name _____

Have you ever done business with HFA before? If Yes, under what account name? _____

Check the category which best applies to you: _____ Corporation _____ Partnership _____ LLC _____ Individual _____ Other
(specify other) _____

If incorporated, please supply State of Incorporation _____

Please supply Corporate Tax ID Number _____

If an individual, please supply Social Security Number _____

Bank Name: _____ Bank Address: _____

Type of Account: _____ Bank Telephone: _____

Outside the U.S: Intermediary Bank Name: _____

Intermediary Bank Address: _____

Intermediary Bank Telephone No. _____ Intermediary Bank Account No. _____

Swift ID No. _____ Bank account name (if different than above): _____

Signature: _____ Title: _____ Date: _____

Print name: _____



4. HFA ONLINE LICENSING TOOLS

Licenses with an HFA account can have access to our online licensing system, eMechanical, and to online reports of licensing activity. These tools are described further below. If you would like to use HFA Online, you must designate an Administrator(s) responsible for overseeing user accounts for your company s employees as described below. You may designate more than one person with Administrator duties; if your company elects to do this, please send a separate copy of the form for each Administrator.

eMechanical is a web-based mechanical licensing application, which will allow you to apply for licenses for physical and digital products online. Licensees can submit and track the progress of license requests in real time; research their entire licensing account online, not just transactions submitted through the application; and request licenses for digital permanent download singles and albums. Please note that this is not a bulk license request tool; if you are interested bulk licensing, please inform an HFA Licensing agent.

Online Licensing Reports give licensees the ability to view all their licensing transactions online and download this data to their own systems. In addition, these reports will help to identify trends or analyze problems using a set of business analytical tools. The data used by the reporting application is now refreshed on a monthly basis with plans to move to weekly updates. The following reports are available in both Adobe PDF and Microsoft Excel formats: Download of License Transactions, Reports of License Transactions by Status Summary; Status Detail; Release Detail; and Song, and Notice of Song Ownership Changes. The reports may be customized using a series of prompts, or filters. The filters for licensing transactions include transaction type (such as digital), transaction status (such as unsigned), and the reporting period.

To utilize the HFA Online Licensing tools, please complete the following:

The organization(s) identified on the reverse of this page hereby request(s) HFA to open an account for and assign a password to the employee identified below, who will act as an Administrator to oversee access within our organization(s) to HFA s online systems. It is understood that the Administrator will be subject to all applicable terms governing use of HFA s online systems and will be responsible for supervising the access of our employees to HFA s online systems in accordance with such terms.

Administrator Name: _____
Administrator Title: _____ Administrator Department: _____
Administrator Postal Address: _____
(if different than company): _____
Administrator Email: _____
Administrator Phone: _____ Administrator Fax: _____

In signing below I represent that I am authorized by the organization(s) identified above to designate the person identified above as an Administrator to oversee our employees' access to HFA s online systems.

By: _____ Print Name: _____
Authorized Signature
Dated: _____ Title: _____

Return with License Request (attached) to:

Licensing Department
The Harry Fox Agency, Inc.
40 Wall St., 6th Floor
New York, NY 10005
Fax 646-487-6799

HFA Internal Use ONLY: Approved by: _____ Acct # _____

ATTACHMENT D

MOVIE SYNCHRONIZATION AND PERFORMING RIGHTS LICENSE

The musical composition (hereafter referred to as "composition") covered by this license is " _____ " by _____.

The motion picture covered by this license is " _____."

The type, maximum duration and number of uses of the composition to be recorded are: _____.

Administrative share: _____

The territory covered hereby is: _____

IN CONSIDERATION of the sum of _____ (\$ _____) receipt of which is hereby acknowledged, _____ hereby grants to _____ (producer), its successors and assigns the following rights:

- (a) the nonexclusive, limited right, license, privilege, and authority to record in any manner, medium, form or language, in each country of the territory the aforesaid type and use of the composition in synchronization or in timed-relation with the motion picture, but not otherwise, and to make copies of such recordings in the form of negatives and prints necessary for theatrical exhibition or broadcast on television as hereinafter provided for, and to import said recordings and/or copies thereof into any country throughout the territory all in accordance with the terms, conditions and limitations hereinafter set forth;
- (b) the nonexclusive, limited right and license to publicly perform for profit of nonprofit and authorize others so to perform the composition in the exhibition of the motion picture to audiences in motion picture theaters and other places of public entertainment where motion pictures are customarily exhibited throughout the world including the right to televise the motion picture into such theaters and other such public places;
- (c) the nonexclusive, limited right and license to publicly perform and authorize others so to perform in all form and media of distribution and exhibition of the Production for so-called Nonbroadcast (Nontheatrical) exhibition (including, without limitation, educational, institutional organizations, in-flight or in-transit distribution, corporate locations and U.S. military bases).

The exhibition of the motion picture in the United States by means of television (other than described in subparagraph (___) b) herein above) including by means of "pay television," "subscription television," "CATV" and "closed circuit" into homes television, is subject to the following:

- (a) The motion picture may be exhibited by means of television by network, nonnetwork, local or syndicated broadcasts, "pay television," "subscription television," and "closed circuit" provided that such television stations have valid performance licenses therefor from the American Society of Composers, Authors

and Publishers (ASCAP) or Broadcast Music, Inc. (BMI), from Publisher, or from a person, firm or corporation having the legal right to issue such license.

(b) It is agreed that public performance of the motion picture in such portion of the territory as is outside of the United States, will be in accordance with their customary practices and the payment of their customary fees.

Publisher also grants to Producer the nonexclusive, limited right to reproduce the composition, as recorded in the motion picture in audiovisual devices, whether now known or hereafter devised, including, but not limited to, videocassettes and videodiscs, manufactured primarily for distribution for the purpose of "home use" ("Videograms") and to distribute them by sale or otherwise in each and every country of the territory for any and all purposes now or hereafter known, without Producer having to make any additional payments therefor.

This license does not authorize or permit any use of the composition not expressly set forth herein and does not include the right to alter the fundamental character of the music of the composition, to use the title or subtitle of the composition as the title of any motion picture, to use the story of the composition, or to make any other use of the composition not expressly authorized hereunder.

The recording and performing rights hereinabove granted include such rights for air, screen, television, and audiovisual trailers, promotions and advertisements for the promotion or exploitation of the motion picture in all media now known or hereafter devised.

The recording and performing rights hereinabove granted shall endure for the worldwide period of all copyrights in and to the composition and any and all renewals or extension thereof without Producer having to pay any additional consideration therefore.

Publisher represents and warrants that it owns or controls the aforesaid extent of interest of the composition licensed in the aforesaid Territory hereunder and that it has the legal right to grant this license and that Producer shall not be required to pay any additional monies, except as provided in this license, with respect to the rights granted herein. Publisher shall indemnify, defend and hold harmless Producer, its successors, assigns and licenses from and against any and all loss, damages, liabilities, actions, suits or other claims arising out of any breach, in whole or in part, of the foregoing representations and warranties, and for reasonable attorneys' fees and costs incurred in connection therewith; provided, however, that such Publisher's total liability shall not exceed the consideration paid hereunder.

Publisher reserves all rights not expressly granted to Producer hereunder. All rights granted hereunder are granted on a nonexclusive basis.

This license is binding upon and shall inure to the benefit of the respective successors and/or assigns of the parties hereto.

This license shall be governed by and subject to the laws of the State of _____ applicable to agreements made and to be wholly performed with such state.

In the event of any breach of any provision of this agreement by Producer, Publisher's sole remedy will be an action at law for damages, if any, and in no event will Publisher be entitled to or seek to enjoin restrain, interfere with or inhibit the distribution, exhibition or exploitation of the motion picture. In no event shall Producer have less rights hereunder than a member of the public would have in the absence of this agreement.

No failure by Producer to perform of any of its obligations hereunder shall constitute a breach hereof, unless Publisher gives Producer written notice of such nonperformance and Producer fails to cure such alleged nonperformance within sixty (60) days of its receipt of such notice.

All notices hereunder required to be given to the parties hereto and all payments to be made hereunder shall be sent to the parties at their addresses mentioned herein or to such other addresses as each party respectively may hereafter designate by notice in writing to each other.

IN WITNESS WHEREOF, the parties have caused the foregoing to be executed as of _____ on _____.

ON BEHALF OF _____

(Publisher)

(Producer)

Address

Address

ATTACHMENT E

SYNCHRONIZATION LICENSE

Dated: September 24, 2018

[LICENSEE]

Copyrighted Work(s): _____
Publisher: _____
Writer(s): _____
Percentage owned: _____ %
Videodisc Title & Format: _____
Artist: _____

We hereby warrant and represent that we are the owner of a valid United States copyright in the above Copyrighted Work(s); the Copyrighted Work(s) is original and does not violate or infringe upon the rights of any person, firm or other entity; we have the full right, power and authority to grant this license; and we will be responsible for payment of all sums due to the writer(s) of the Copyrighted Work(s) by reason of your exercise of the rights granted herein.

Upon your obtaining a fully-executed copy of this license, we hereby grant you the nonexclusive right to synchronize the above-referenced Copyrighted Work(s) in time-relation of the Videodisc named above for sale for home use only. It is further understood that such synchronization is of a live performance of said Copyright Work(s) and that the performances of any artists other than the Artist(s) named above are not to be used for said Videodisc.

Pursuant to the above facts and in consideration of the mutual covenants and conditions herein set forth, the parties do hereby agree as follows:

1a. Upon the execution of this agreement, you shall pay to us a royalty for each Copyrighted Work named above equal to _____ (\$____) per Videodisc produced by you for each Videodisc sold. The royalty shall be reduced proportionate to the percentage owned or administered by us where our rights are not equal to 100% of the copyright in said Copyrighted Work(s). The royalty rate granted herein is offered on a "most favored nations" basis with all other publishers of copyrighted material contained on the Videodisc referenced above. Should you grant any other publisher a higher royalty rate or more favorable terms than those outlined herein, we shall automatically become entitled to payment at such higher rate or upon more favorable terms as though such rate or terms were set forth at length in this agreement.

1b. Videodiscs which are distributed as promotional units or as so-called "free goods" shall not be deemed sold and no royalties shall be payable under this agreement. The distribution of such "free goods" or promotional units shall not exceed ten percent (10%) of total sales.

2. You shall account to us for and pay all royalties due in U.S. Dollars within sixty (60) days after the last days of June and December of each year. An advance against royalties equal to 500 copies of the Videodisc is due upon execution of this agreement.

3. The territory of this license is the World.

4. You shall accord us screen credit on positive prints of the Videodisc in a size and form no less or more prominent than any other Copyrighted Work. You shall require compliance with the foregoing credit in all agreements for the distribution, exhibition or other exploitation of the Videodisc. All other characteristics of said credit shall be at your discretion.

5. This license covers and is limited to the recording of the Copyrighted Work(s) by the above Artist on the above Videodisc (and re-releases thereof).

6. The term of this Agreement shall commence on the date hereof and continue for the life of the Videodisc, unless cancelled in writing by either party.

7. We hereby indemnify, save and hold you harmless from any and all loss or damage (including legal expenses and reasonable attorney's fee) arising out of or connected with any claim by a third party which is inconsistent with our warranties and representations contained herein.

8. Your and our status hereunder shall be that of independent contractors and nothing herein shall create, expressly or impliedly, a partnership, joint venture or other association between the parties.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns, and shall be construed and interpreted under the laws of the State of Texas applicable to agreements entered into and wholly performed therein. Any dispute arising hereunder shall be determined by a court of competent jurisdiction within the State of Texas.

This Agreement is the entire agreement between you and us with respect to the subject matter hereof. This Agreement may be amended only by a written instrument executed by you and us. A waiver by any part of any term or condition of this Agreement must be in writing and shall not in any instance be deemed or construed as a waiver of such term or condition for the future, or any subsequent breach thereof.

Sincerely,

[LICENSOR]

By: _____

Federal I.D. No. _____

Agreed To and Accepted By:

[LICENSEE]

By: _____

Federal I.D. No. _____