STAYING SAFE IN THE CYBERJUNGLE: LEGAL ISSUES IN USING DIGITAL MEDIA

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• Music
  • Different rights in music
  • Licensing
  • Royalties

• Other Copyright Issues

• Other Issues
RIGHTS IN MUSIC

• Two rights in every recorded piece of music
  • “Musical work” or “musical composition” – the words and music of a song
  • “Sound recording” or “master recording” – the song as recorded by a particular band or singer

• Which right, and how that right is used, determines how you pay for the use of music
LICENCES

• **Mechanical License** - reproduction and distribution of musical works

• **Master Use License** - reproduction and distribution of master recordings

• **Public Performance License** - public performance of either the musical work or the sound recording
PUBLIC PERFORMANCE

• “Public”- any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances gathered

• “Perform”- to transmit or otherwise communicate a performance or display of the work to a place specified... or to the public
  • Both radio broadcasts and broadcasts by means of digital audio transmissions
RIGHTS

• **Performing Rights** - publicly perform or display (see slide 8)

• **Grand Rights** - perform music as part of dramatic performances (operas, plays, ballets, concert versions of dramatic musical works)

• **Mechanical Rights** - copy and reproduce mechanically (see slide 8)

• **Synchronization Rights** - use musical works and/or sound recordings in combination with visual images
OBTAINING SYNCHRONIZATION RIGHTS

• When audio or visual producer uses recordings in a project:
  • Must contact owners of both Sound Recording and Composition
  • Make an inquiry with the copyright administrator
  • Rights holder or administrator issues a quote
  • Negotiations ($0.00-$10,000’s)
    • Intention
    • Length
    • Prominence
    • Popularity
ROYALTIES FOR:

• Musical composition public performance- ASCAP, BMI, and SESAC

• Sound recording public performance- SoundExchange (Digital performances only)

• Other rights- payments elsewhere, usually require direct interaction with copyright holders or their agents
CURRENT ISSUES

• Who owns what?
• “Performance tax” on over-the-air radio
• Streaming fees
• Music Composition copyright holders jealous of sound recording copyright holders
  • Big publishers look to withdraw their catalog from ASCAP and BMI
  • Department of Justice looking at reforms
CURRENT ISSUES (CONT.)

• Do Pre-1972 sound recordings give rise to performance royalty?
• Potential Copyright reform on the horizon
SOUNDEXCHANGE ISSUES

• Limits on what you can stream:
  • No more than 2 songs from any album consecutively
  • No more than 3 sound recordings from one album
  • No more than 4 sound recordings from the same artist/set/compilation

• Limits on archiving
  • “Looped” or continuous programs allowed, but must be at least 3 hours long
  • “Archived” programs allowed for 2 weeks, but must be at least 5 hours long

• Can’t pre-announce songs

• Must identify songs in text on player or website
ON DEMAND SERVICE (PODCASTING, ETC)

• Royalties paid don’t apply to traditional podcasts

• Usually require direct licenses

• Podcasters need the right to reproduce and distribute music (Mechanical License)
  
  • Those are often obtained from record labels or songwriters directly
OTHER COPYRIGHT ISSUES

• Unauthorized use of content – photos are a huge issue
• Images and files posted online still have copyrights attached
  • Use clearinghouses to get stock photos
  • Can apply even to social media
• If material is registered with the Copyright Office, damages can be as high as $150,000
CEASE AND DESIST

• Probable response to a copyright infringement

• However, the victim does not have to send a letter

• Might receive a Demand Letter
  • Specifying financial penalty that must be paid to avoid lawsuit
  • Talk to your lawyer to figure out best response
FAIR USE

• Reactive defense, not proactive defense

• Created to allow:
  • Criticism, parody, news reporting, research and education about copyrighted works
  • Not created to allow promotion, reproductions, nor creative works.
FAIR USE (CONT.)

• Fact specific analysis
• Four Factors:
  • Nature of Use
  • Type of Work
  • Amount Used
  • Impact on Market
GRAY AREAS IN MUSIC

• Parodies
• Mash-ups
• Sampling
• Satire
OTHER ISSUES

• Sponsorship Identification
  • Applies online, just like it does over the air
  • That’s why you see “#ad” on many celebrity tweets
  • Identification depends on the medium, but if you got something to say something, you need to identify it

• Privacy issues
  • Collection of identifiable information about children is prohibited without consent of parents
  • Lots of issues if you don’t keep personal and financial information private – don’t take credit card numbers for online purchases – use PayPal or other services
• Common sense is key

• Find out what licenses you have and your royalty free options

• Don’t just take something, because you can’t figure out how to license it

• Establish your own brand – but make sure that brand is not already taken

• Create your own imaging that reflects your organization


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