

"All Clear?" - A Music Clearance Primer

©2005 by David G. Powell

(This article was first published in "[International Documentary Magazine](#)")

Just looking at this year's Oscar nominees for best documentary will tell you that documentary filmmaking can be no less diverse than life itself. No matter what style of documentary filmmaking you employ, or subject matter you are undertaking, there will most likely be one underlying common thread that you will use in telling your story: music. Whether your documentary is educational, biographical or political in nature, at some point music is going to play a role in conveying your creative vision and helping to tell your story on an emotional level.

The more you understand the dynamics and mechanics of music clearance and music rights, the smoother the ride will be for you and your film, creatively as well as financially. Following are some of the basics of music clearance that hopefully will shed some new light on its mysteries.

Golden Rule #1

Assume that every bit of music—whether a planned or spontaneous live performance, miscellaneous background source leakage captured during filming or specific music added later during post-production—has at least one owner from whom you will need to "clear," or obtain permission, in order to include that music in your project. Copyright owners of music—as well as the recordings of such music—have the exclusive authority, backed by US copyright law, to say yay or nay to any license request where audio/visual projects are concerned, and to set and charge fees for those usages.

The only exception to the above is music that falls under the much misunderstood "public domain" category, which usually includes most pre-20th century classical music, plus some traditional folk songs and spirituals. However, it can actually be more complex to verify public domain status than actual contemporary compositions, as a composition may be public domain in the United States, yet under copyright control in another country. Also, don't make any assumptions based on what you think or hear is public domain until it is positively verified. In addition, remember that even while a composition may be public domain, a specific arrangement or recording of it is not.

Golden Rule #2

There are no gray areas. You either have permission in writing to use specific music in your film, or you don't. No maybes or promises.

Golden Rule #3

Clear it before you have no other choice. In other words, clear all music before your final audio mix and film completion. Don't get stuck with high fees quotes or denials that result in having to go back to remix your film or, at worse, holding up or prohibiting a potential distribution deal. Following these three golden rules will keep you out of trouble and save you lots of headaches.

When Do I Start Music Clearance?

The process of music clearance actually starts in pre-production. If you are planning on shooting live music performances, or pre-producing music for taped live performances, or you have scripted references to music, then you will want to pre-clear those music rights before commencing shooting. Also, be aware of any potential live or source background music when taping interviews. All other music clearances are usually handled in post somewhere before your final audio mix, including musical underscore, main title songs, featured, montage or background songs, source cues, end-credit usages and clip clearances containing music. CD soundtrack deals mostly happen during or after post as well.

What Types of Licenses Do I Need, and Where Do I Get Them?

There are two types of licenses needed. The first is a synchronization--or "sync"--license, controlled by the publisher, that grants the right to include the actual composition or piece of music in timed relation to the picture. The second is the "master use" license, controlled by the record label, that grants the right to include a specific recording of the composition in timed relation to a picture. For instance, there is only one administering US publisher of the Lennon-McCartney tune "Yesterday," but dozens of released recordings of the composition performed by various recording artists and owned by different record labels.

How Do I Identify Who Owns the Music I Want?

ASCAP, BMI and SESAC are American "performance rights" societies, of which most professional songwriters and publishers are members. Each society has a website for easy online research of publisher/copyright owner contact information for songs, plus phone support. One can research master rights information of commercially released recordings on sites such as amazon.com, plus CD jacket and booklet credits. Usually, independently released artists, whom you can approach directly, will be self-published and will control both sync and master use rights.

How Do I Request a License?

Every major and independent label and publisher has a person, staff or department dedicated to receiving licensing requests, as well as pitching their catalogs to filmmakers for licensing opportunities, and will want to see your request in writing. Publishers require composition title, writer(s) and publisher(s) information, while master rights owners require the recorded track title, performing artist and the source of the recorded track. In addition, both will want a brief project synopsis (including producer, director, actor and narrator information), overall film budget, music budget, funding and donors (if any), profit or nonprofit status, tentative distribution plans and licensee information and address. More specifically, they will need the usage type, length and scene description of intended usage, such as "background car radio source of 35 seconds, under scene of main characters discussing life while parked at the beach."

Additionally, you will need to provide the actual rights and fees you are requesting, which can run from festival, promotional and educational through video, DVD, theatrical, various forms of television, Internet, new technologies, interactive, in-context and out-of-context trailer rights to all of the above. Finally, you will need to indicate the actual territory you are requesting, such as US only or the World, along with the term of the rights requested, such as five years or perpetuity. The more thorough you are in providing this information in your requests, the quicker and easier you will make it for licensors to respond favorably.

Each licensing department has its own system for quoting and granting fees based on type and length of usage, breadth of the rights requested, overall film budget, music budget, subject matter of the project and proposed scene. These criteria are also measured against the "real estate" value of the composition or recording--sales, chart and licensing fee history and recognition and popularity factors. Also considered are the in-house fee guidelines of the particular licensing corporation or entity, as well as any pending copyright or legal issues or restraints. Finally, outside approvals are often needed from either the artist (for the master use) or the songwriter (for the sync use), and videos of the project or specific scene may be requested. This process can take from one day to eight weeks or more, depending on the variables.

What you hope to have back in your hands is a preliminary written quote approval stating the specific rights granted, along with the term, territory and fees to be charged. These written quotes are usually good for 45-90 days, during which you can then proceed to your audio mix,

negotiate further or drop and move onto something else more affordable or with more favorable terms. Typically, when your audio mix is complete, you would then send a second letter to the licensors confirming that you have indeed included the title in your film based on the rights previously quoted, and requesting that they now send you a formal license reflecting the fees, terms and conditions previously agreed to in the earlier written quote. Major or sophisticated licensors will usually issue their own licenses, while unsigned independent artists and self-published songwriters and composers will most likely need you to issue formal licenses to them. It is also important to remember that compositions can have multiple publishers owning various portions or percentages, all of which need to be cleared. In addition, master recordings may have "samples" of other recordings imbedded or incorporated within the track that need to be cleared separately.

Typical Fee Strategies and Ballpark Figures

Given the axiom that the more rights you ask for, the higher the fee quotes may be, it is good to have an understanding of some basic music clearance strategies. These are usually dictated by your confirmed or tentative distribution plans. And yes, you do need to clear music for film festivals, contrary to popular myth.

Festival Rights Only

The first and most common approach is to request film festival exhibition rights only (which might also include educational/promotional exhibition) for a term of one to two years, with the licensed territory being either North America or the World. This is a good strategy that allows you to apply for and shop your film through film festival cycles using your chosen music, licensed at typically the lowest rates available for the most minimum of rights. The drawback is that you will have to clear some or all of those other rights later as you make distribution deals, so you must have the technical option of replacing compositions and tracks, in the event that you are denied permission or cannot come to reasonable terms and fees. Audio re-mixing is increasingly not a problem for filmmakers who have easy access to the original elements via systems such as Final Cut Pro or Avid.

Options

You can also ask for option quotes for certain rights to be exercised at a later date, such as all television (including free, pay, cable, satellite, etc.) for the World for a term of 10 years, video/DVD rights at so many cents per unit with an advance against so many units, theatrical only, Internet streaming on your website, etc. In this way the option fees are locked into your license. However, some licensors may quote higher rates if asked to commit to a fee for rights that may or may not be exercised in the future.

Broad Rights

If you are doing a one-time audio mix, knowing that the film is complete, you may want to request all the rights you might ever need for any distribution scenario, which could be "all media [now known or hereafter devised], perpetuity, the World." It's the most "broad" of rights packages and typically what films with planned theatrical releases will require. It would be the most expensive, but would most likely include theatrical, video, DVD, all television, linear only Internet, new media, in-context-only trailer rights, etc. In this way you will have covered your distribution bets. Also important to mention is that out-of-context trailer rights (meaning use of the song and/or track in trailers over scenes other than the one it was originally licensed for) are treated as advertising, and thus can be very expensive.

Step Deals

Major licensing departments will sometimes be amenable to discussing a "step deal," where you trade off a low initial fee in return for later payments when certain media and sales plateaus are commercially realized. Typical examples would be an initial fee, additional payments of the initial fee at certain worldwide theatrical box office gross plateaus (as reported in Daily Variety)

a one-time-only additional payment at DVD/video release, a one-time only additional payment where "new technologies" are exercised, etc.

Most Favored Nations Clauses

This is a common occurrence in music clearance and can work for you and against you if not watched and understood. In return for a certain rate, a licensor will typically attach a Most Favored Nations, or "MFN," clause. This means that if any other licensor of the composition or recording gets a more favorable rate or better terms, this licensor must get those higher rates or terms as well. This can work for you in requesting a lower rate across the board because a licensor can grant the low rate assured that, with the MFN clause, if someone gets more, so will the licensor. The clause can work against you if the one license that you can't live without comes in higher than the rest, and subsequently raises the fees on every other license. MFN clauses can also be limited to certain terms such as between co-publishers of a certain song only, or between all other master recordings included in the project.

Soundtrack Rights

CD soundtrack rights are not usually granted up front as part of sync and master-use licenses. However, one advantage to negotiating a soundtrack deal up front with a record label is that you may be able to obtain very favorable master-use fees for inclusion of that label's artists.

Composers

Your film will most likely need specific incidental music written for it, in addition to songs you license. A typical scenario is to do a "work-for-hire" agreement, whereby you hire the composer to create music to which you will own both master rights and publishing rights outright, in exchange for a composer fee, credit and other considerations. Another increasingly popular cost-lowering strategy is where the composer creates the music to your specifications (as before), but retains the master and publishing rights, then licenses back to the filmmaker all the rights needed to market and distribute the film.

Realistic Dreams

Documentary filmmakers are visionaries, accustomed to moving through the daunting challenges of making films. Treat music the same way: pursue your musical goals for your project...but have a back-up plan. Most filmmakers have expensive music licensing tastes because they understandably want to license what they listen to, which is most often well-known, commercially released music. Oftentimes, reality and frustration set in when the quotes arrive. The more realistic you are, the more ease you will have in the creation of your audio-visual masterpiece. Also, the more restrained your music budget is, the more creative and innovative you sometimes are with finding rare and unknown music, undiscovered talent and unique approaches to your soundtrack.

In Closing

Music clearance is very detailed, precise work, requiring a learning curve, research, phone calls, paper work and lots of time and patience. If this still seems daunting, you can also treat music clearance as you would any other technical aspect of your production: hire a professional. There are music clearance companies that have the experience and relationships with licensing departments already established, know the current licensing trends and policies, and can help strategize your rights package. And they usually cost less than an attorney.

©2005 by [David G. Powell](#) for The Music Bridge LLC

(All rights in and to this article are expressly reserved by the author and may not be reproduced, copied, posted, downloaded, reprinted or published without express written permission)

©2006 The Music Bridge LLC