

From the AACT Knowledge Base

Using Recorded Music--Legally

By Stephen Peithman

If you use recorded music before, during, or after a show, you are obligated by law to pay royalties for its use as long as the music and recording is protected by copyright.

How you go about satisfying the law depends on how the music is used—as general background in your lobby or auditorium, or as music tied to the stage performance itself.

Background Music

If you play general background music on a routine basis, you should apply for a general license from the organizations that represent the writers and publishers of the songs. The best-known organizations are ASCAP (American Society of Composers, Authors and Publishers) and BMI (Broadcast Music Industries).

General or blanket licensing is used by businesses like restaurants or stores that play background music throughout the workday. If you use a lot of background music, it's usually cheaper to get the yearly blanket license. (Many colleges and universities, for example, do this to simplify royalty payments for band, orchestra, choir and theatrical performances.) ASCAP and BMI base the amount of the fee charged for performance licenses on the type of theatre, and its seating capacity.

You can license the entire output (catalog) of a particular composer or the entire catalog of all ASCAP or BMI composers (the latter is best for general background music). However, you cannot get permission or a license for just one or two songs.

Production Music

If you ask for permission to use a recording of “White Christmas” as lead-in music for your second act, or to use the Boston Pops recording of Stephen Sondheim’s “Night Waltz” to bridge between scenes two and three, you need to go elsewhere. That’s because ASCAP and BMI license entire catalogs, and only for non-dramatic purposes, such as general pre-show or intermission music. If a recording is used every night for a specific play, it becomes a dramatic use, and is out of ASCAP or BMI jurisdiction.

Permission to use recorded music in combination with live stage performances (and with visual images in television, films, computer programs, websites, and other audiovisual formats) involves what is called “synchronization rights.”

Since the recorded use of music in combination with visual images (i.e. synchronization) does not come within the scope of the compulsory license provisions of the U.S. Copyright Act, licenses for use of music in live stage performances must be negotiated on an individual basis between the copyright owner and the prospective user. So don’t wait until the last moment; obtaining rights, like all legal matters, can take time.

While there currently is no national broker for obtaining such rights, you can do it yourself. Here's how:

- Visit the ASCAP and/or BMI websites. Search for the song(s) you want, and find out who owns the rights to each (most often, it's a publisher, but it may be an agent, attorney, or composer/lyricist).
 - ASCAP: Use [Ace Title Search](#)
 - BMI: Use ["Search BMI's Repertoire"](#)
- Write the rights holder or agent, asking for permission to play the music during the production. Explain when and how the music will be used. Indicate the number of performances, and the average admission charged for each, as well as the dates of performance.

Music In the Public Domain

If the musical selection is no longer protected by copyright, you need not seek permission. However, since protection includes both the music and the performance, it is not always easy to determine from a recording just what is protected by law. As a rule of thumb, most songs written in the last 75 years, and most recordings made in the last 50 years, are protected.

Recordings often do list whether a song is ASCAP or BMI. The websites for ASCAP and BMI also have searchable databases for the composers and copyrighted songs represented by each composer. (ASCAP's database is called "ACE." BMI's is called "BMI Repertoire.")

Original Music

The simplest approach is to find someone to compose original music for your production. This can be used without licensing or royalty payment, as long as you have an agreement (written or verbal) with the composer.

Contacts:

- ASCAP, One Lincoln Plaza, New York, NY 10023 212.621.6000
E-mail: <mailto:Licensing@ascap.com> Website: <http://www.ascap.com/>
- BMI, 320 West 57th St., New York, NY 10019 212.586.2000.
E-mail: <mailto:genlic@bmi.com> Website: <http://www.bmi.com/>
- SESAC, 5 Music Square East, Nashville, TN 37203 615.320.0055
Website: <http://www.sesac.com/>

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