

MUSIC SYNCHRONISATION LICENCE FACT SHEET

REMEMBER TO CHECK OUT THE MUSIC SYNCHRONISATION LICENCE CHECKLIST THAT GOES WITH THIS FACT SHEET. [\[HYPERLINK TO CHECKLIST\]](#). THE CHECKLIST OUTLINES KEY TERMS IN A MUSIC SYNCHRONISATION LICENCE, AND THIS FACT SHEET PROVIDES MORE DETAILS ON THOSE TERMS.

WHAT IS A SYNCHRONISATION LICENCE

A music synchronisation licence (often called a "sync licence") is a contract under which someone who owns or controls copyright in a musical work, such as a song, or a sound recording of such a musical work, gives someone else the right to use that song or that sound recording in a TV show, movie, video game or any other type of audiovisual material. It is called "synchronisation" because the user wants to "synchronise" their video material with the music.

It is important to remember that there are separate copyrights in musical works and in sound recordings. Where the musical work is controlled by one person (such as the writer, or their music publisher), and the sound recording is owned or control controlled by another (such as a recording artist, or their label), the producer of the audio-visual material will need to get a separate licence from each rights owner. If, on the other hand, you own the rights in both your musical compositions and your recordings of them (as is often the case with independent, unsigned artists), then you will be able to grant both licences at the same time, and perhaps in the same document if it is properly drafted.

Fees from synchronisation licences are generally more lucrative than ordinary royalties, and so synchronisation licences can be an important source of income for creators.

WHEN DO YOU NEED A SYNCHRONISATION LICENCE?

Each time a filmmaker, advertising agency or other potential user wants to use a specific piece of music (or recording of a piece of music) to accompany audio-visual material, they must first get the consent of the owner or controller of the copyright in that song or recording. The relevant rights owner for a sound recording might be the artist or the record label who released the recording. The relevant rights owner for a musical work might be the composer of the song or their music publisher.

In publishing agreements or record label deals, composers and recording artists often retain approval rights over the granting of sync licences, so that they can control where their work appears, as it can affect their reputation. And of course, some artists and composers are keen to protect the integrity of the artistic intent of their work. So, they might consider the associations that could be made by the proposed use, or the products advertised using their work.

WHY DO YOU NEED A SYNCHRONISATION LICENCE?

Reproducing a song or a recording in the context of audiovisual material is one of the exclusive rights of a copyright owner under the Copyright Act. The sync licence provides proof that the user has the right to incorporate the song or recording in their audio-visual material. Apart from that being good commercial and rights management practice, sometime media producers need to demonstrate to broadcasters, licensees, streaming platforms, financiers, insurers etc that they have the necessary rights. And of course, as a contract the sync licence also sets out the terms of that permitted use and how the rights holder is compensated for the use.

Key Terms of a Music Synchronisation Licence

PRODUCER'S DETAILS

Correctly identify the producer entity. The producer is likely to specify that the rights granted apply not only to them but to their "licensees and assigns". Correct identification assists with invoicing, and enforcement should that ever become necessary.

RIGHTS OWNER/CONTROLLER DETAILS

Correctly identify the rights holder or holders granting the licence. If there is more than one (for example, if the song has been co-composed, or there are multiple owners of the sound recording) you might use the phrase "each separately". Be wary of "together

and separately" language because it makes each named person granting the licence liable for the warranties and indemnities of the other(s). In Australia, unless there is an agreement between them to the contrary, no one copyright owner can grant a licence on behalf of another copyright owner, so the producer must get a separate consent from each copyright holder. (This is not the situation in some other jurisdictions, where one copyright owner can sometimes grant a licence on behalf of all the copyright owners subject to certain conditions.)

MUSIC DETAILS

Correctly identify the material that is being licensed. Generally, this is done by setting out the title of the song and the name of the composer (or names of the composers if more than one). You could also include the APRA ID registration number if you had that to hand.

Sometimes for co-written musical works, and co-owned sound recordings, the copyright owners will have different percentages of control over the copyright. (For musical works, this is often based on their proportionate contribution to the work). The producer will want you to indicate the control percentage you're granting. If it's less than 100%, of course, the producer will need to make up for that deficit with another licence from the appropriate rights holder.

The licence should state how much of the music the producer can use, expressed as duration. You might also specify which part of the music can be used. A short duration might attract a lower fee than a longer one: that is a matter for negotiation.

DETAILS OF PRODUCTION

Correctly identify the media production itself, by title, type and a concise description. Sometimes rights owners like the producer to describe the scene or other relevant context in which the music will appear, so everything is clear about how and where the music will be used in the production.

TERRITORY

Every licence should describe the territory in which the licensee (i.e. the producer) can use the licensed rights. In the business of music synchronisation with media productions, territory is very important. An advertising campaign, for example, might only want to use the music with its television commercials within certain markets or jurisdictions. In the advertising world, the producer or the brand expects to pay more for each (an additional fee for each additional territory). On the other hand, a feature film, or other production intended for international release will generally require the rights to be worldwide.

TERM

Similarly, every licence should set out the Term, or duration, of the licensed rights. In an advertising campaign, that would be for the planned duration of the campaign, perhaps with some options to extend the period for a further fee. By contrast a feature film, or other media production that will be released to the public commercially, will require the Term of the licence to be “in perpetuity”, because once the production which including the music is out in the world, the producer cannot easily remove the music from it.

RIGHTS

The parties should be very clear about the type and scope of rights that have been granted in the sync licence. A key issue will be whether the licence is exclusive or non-exclusive. Generally, for example, a licence of music to a feature film or TV series or streaming series will be non-exclusive, whereas a licence for an advertising campaign will be exclusive during Term and in the Territory of the campaign.

Rights holders might also want to limit the format in which the music can be used in connection with the media production. For example, for an advertising campaign, the grant of rights might be only for radio and television, and not Internet. Or it might be for Internet advertising only. By contrast, a licence for use in a film or similar production is likely to be for “all formats” because the producer does not want any limitation in the ways in which its media production can be consumed by the audience.

Because, as noted above, there are separate copyrights in the musical work and the sound recording respectively, some producers try to save money by licensing only the musical work and making their own recording of that work so they do not have to licence a pre-existing sound recording for a separate fee. For this reason, some rights holders in musical works will sometimes make it a condition of the licence contract that the producer is not allowed to make a recording of the musical work which sounds like a pre-existing well-known recorded version. (Such cover recordings are known as “sound-alikes”.)

OPTIONS

Producers may negotiate options to increase the Term or the licensed media, or the Territory of the licence. Generally, they will need to pay an additional fee to exercise each such option. Sometime rights holders negotiate that option fees are higher than the original fee. (On the basis that, for example, an advertising campaign is proving so successful that the brand or ad producer wants to extend the range of the licence, then the rights holder wants an uplift to reflect that success.)

WARRANTIES

As noted above, producers must ensure that they have cleared all the rights needed to use the song. In order to protect themselves, producers usually require that the rights holder promises that they are able to grant the producer the necessary rights, and that the musical work or recording does not infringe any third-party rights. That promise, or warranty, is usually coupled with an indemnity, under which the rights holder promises to compensate the producer for any damage the producer suffers if the rights holders' warranties prove untrue. This can be a very onerous and financially perilous promise to make.

A rights holder in musical works will want the producer to promise that it will lodge cue sheets with APRA, so that of the musical work in streaming, broadcast and public performance up picked up by the APRA licensing system and generate royalties for the composer and the rights holder.

SYNCHRONISATION FEE

Synchronisation fees are generally lump sum fees. There will be an initial fee for the initial agreed term, territory and media. Options will attract additional fees, if exercised. The contract should make it clear when and how the rights holder gets paid.

It is not unusual in sync licences to include "most favoured nations" clauses, under which, for example the rights holder for the musical work stipulates they should get at least as much as the rights holder for the recording of the song – and usually the converse is stipulated by the rights holder for the recording. There is potentially an element of illegal price-fixing in this practice, however it remains endemic.

TERMINATION RIGHTS

As with all contracts, it is prudent to set out how and when one party can terminate the agreement. This might include a right to do so if the other party breaches the agreement and doesn't cure the breach within a set time period.

The contract should also state what happens on termination. In some cases, the right holder can negotiate terms which allow them to recover any infringing material if the other party uses the previously licensed material outside the agreed Term, media or Territory. On the other hand, given the complexities of the international screen content distribution system, most synchronisation agreements for the use of music in TV and film and similar productions stipulate that termination of the agreement does not result in the producer ceasing to have the right use the music in their production, and the rights holder's sole remedy for the infringement is limited to claiming damages to compensate for the breach. The contract may also stipulate that the rights holders will never be able to get an injunction restraining the exploitation of the media production in the market and will have to rely on their damages claim.

For more information, you can speak to your local Industry Association, the Arts Law Centre of Australia or a legal practitioner.



This checklist is an initiative of the Australian Music Industry Network. For more information visit www.amin.org.au.