

WHAT YOU NEED TO KNOW ABOUT LICENSING AND COPYRIGHTS

The International Recording Media Association's (IRMA) Anti-Piracy Compliance Program assists in protecting copyright owners from unauthorized reproduction of their property.

Trutone Replication proudly participates in this program.

By properly protecting your intellectual property (music, film, software, literary, dramatic, artistic, and certain other intellectual works), you ensure that the rights of all parties involved in the creation of music CDs, DVDs, vinyl, and CD-ROMs are safeguarded.

No legitimate disc manufacturer would replicate discs or vinyl without first requiring that you prove ownership or licensing of all copyrighted material first. That is why Trutone Replication is committed to making the procedure as easy as possible.

The industry standard for providing ownership and licensing information is the Intellectual Property Rights Form or IPR form. The IPR must be submitted at the time you place your order with Trutone Replication in order to avoid delays.

Before we can explain how to fill out the IPR form properly we must first understand what a copyright is and how to obtain one.

What is a copyright?

Copyright is a form of protection provided by the laws of the United States to the authors of "original works of authorship," including literary, musical, artistic and certain other intellectual works. This protection is available to both published and unpublished works.

Who can claim copyright?

Copyright protection exists from the time the work is created in fixed form. A "fixed form" is basically creating a copy of your created work on paper, CD, tape, phonorecord, video, etc. The copyright.

immediately becomes property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.

How to secure a copyright

Copyright is secured automatically when the work is created. A work is “created” when it is fixed in a copy or phonorecord for the first time.

However, there are advantages to registering your copyright. For one, it provides you with written documentation that you are the owner of the copyright.

Registration Procedure

To register a work, send the following three elements in the same envelope or package to:

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

1. A properly completed application form
2. A non-refundable filing fee for each application
3. A non-refundable deposit of the work being registered

For further information please log onto the Copyright Office website at:
www.loc.gov/copyright.

Filling out the IPR Form

The project you are submitting to us may either be a music project or a business/software application. In either case, the IPR form must state that you are the rightful owner or licensee of the intellectual property material contained therein.

Music project

Songs that you composed

From an Intellectual Property Rights perspective, a project where you, the artist, composed the songs and recorded the music is the most simplest and straightforward of projects. Since you own the rights to the compositions and the recording just simply fill out your IPR documentation and indicate that you are the owner of all the recordings and compositions.

Songs that you did not compose

If you are manufacturing and distributing copies of a song, which you did not write, you need to obtain rights from the owner to include that song.

The key words here are “manufacturing” and “distributing”. Please note that it does not matter if you are selling the product or using it for promotional purposes only. Selling your product is not related to securing clearance. Permission is required to use someone else's material, even if it is for promotional purposes only.

Mechanical License vs. Master Use License

Including pre-recorded songs composed by someone other than yourself in your project in most cases requires you to obtain two separate licenses.

This is necessary because a recorded song consists of both the composition (the intellectual property containing the lyrics and/or music written by the composer) and the master recording (the actual physical recording of those lyrics and music performed by an artist). In many cases the owners of these respective copyrights are separate.

A publishing company normally controls composition rights. In order to use their composition, you must obtain what is called a Mechanical License.

Mechanical License

A mechanical license is written permission from the publisher to manufacture and distribute a “mechanical device” such as a record, CD, DVD, or audiotape for a specific copyrighted composition. The amount of the royalty paid to a songwriter from a mechanical license is determined by such factors as how many recordings are manufactured, distributed, or so ld. (See Licensing Payment)

To find out who owns a copyright, contact ASCAP (www.ascap.com), BMI (www.bmi.com), SESAC (www.sesac.com), or the Harry Fox Agency (www.harryfox.com). ASCAP, BMI, and SESAC only license music for performance and theatrical use. For mechanical licenses, you can contact the publisher

directly to negotiate your own rate or contact the Harry Fox Agency and agree to pay the statutory mechanical rate. (The statutory rate is a rate set by the Copyright Office.

It is currently 8.5 cents per songs 5 minutes or less and 1.65 cents per minute or fraction thereof over 5 minutes.)

Most people go through the Harry Fox Agency because they offer publishers and licensees a single source for licensing and for the collection and distribution of royalties.

Master Use License

When you include a previously released song in your project, you will have to obtain the permission of the owner of the master of the recording. To do this, you will need to know the title of the recording, the title of the artist, and hopefully the name of the album and its record number. Contact the record label that released the source recording. The departments normally in charge of licensing are the Business Affairs and/or Copyright Licensing Departments. When you contact a label, mention that you would like a Master Use License.

If you include recordings from different artists on one project, this is called a Compilation. Compilations require a Master Use License for every track by every artist on your album.

If the record company agrees to license the master to you (they can always say “no”), you then have to negotiate a rate or fee. The rates vary, but it will usually involve payment of a lump sum, usually before the record comes out, anywhere from a couple of hundred to a few thousand dollars. This can be a flat fee, or paid on a rollover basis (i.e., paid again and again, each time the record reaches a certain sales plateau), or it may be expressed as an advance against a royalty (such royalty anywhere in the range of less than 1 cent, to 5 or 6 cents per cut).

Full-length vs. Sampling vs. Cover Version

Whether or not you need to acquire rights from the master holder (which in most cases is a record label) depends on whether or not you are using the actual song, portions thereof (sample), or re-recording the song yourself (cover version).

Cover Version

Since a Cover Version means you are re-recording someone else's composition, you will need to obtain a Mechanical License, but since you are re-recording the song you do not require a Master Use License. You are, in essence, creating a new master that you will own.

Samples

The same clearance procedure applies for samples as for full versions of a song. There are two consents required in order to use a sample of another's recorded songs in your work: (1) from the owner of the recording (usually a record label) and (2) from the owner

Sound Effects

Sound effects, either manufactured or recordings of natural sounds are all capable of achieving copyright protection. It is the recording itself rather than the source material, which is subject to copyright protection.

Thus, only one consent is required from the owner, usually a record company or sound lab. Contact the company for its licensing terms. Sound effects may be licensed on a per use basis, just as samples are licensed from the record companies, or they may be licensed in connection with the purchase of the CDs, discs, or whatever they're recorded on; purchasing an entire sound effects library can run into tens of thousands of dollars.

Sound Bites

There are several clearances involved in the use of a sound bite:

a. Source Material

First, a written speech is source material, like a composition, and its author would have to grant permission.

Like all copyright clearances, this may take some detective work to ascertain who owns the rights.

b. Recording of the Speech

Just as in the cases of recorded music and sound effects, the copyright holder of the master sound recording of the speech would also need to give consent for your use.

There are some cases where the song, sample, or sound bite you are looking to license is in the public domain and therefore does not require license authority. Music and lyrics written by an American author and published in 1922 or earlier are in the Public Domain (PD) in the United States. No one can claim ownership of a song in the public domain; therefore everyone may use public domain songs. PD songs may be used for profit making without paying any royalties. If you create a new version or derivative of a public domain song, you can copyright your version and no one can use it without your permission.

However, the song remains in the public domain, and anyone else can also make and copyright a version of the same PD song. If you don't know whether or not your song is in the public domain, we suggest you search on www.pdinfo.com for more information.

Licensing Payment

If you are obtaining your mechanical license through the Harry Fox Agency they will ask how many units

If you would like to obtain a license to manufacture and distribute your product within the U.S. for 2,500 or less units, you can get an HFA (Harry Fox Agency) mechanical license at SongFile.com

The license allows for the production of a minimum of 500 units to a maximum of 2,500 units for a fee based on the current statutory mechanical rate. (The statutory rate is a rate set by the Copyright Office.)

All processing is done automatically online. Confirmations by e-mail are issued immediately and licenses

follow via e-mail to the licensee within forty-eight hours.

If you file through SongFile.com you pay for your licenses in advance based on the amount of units manufactured, not sold or distributed.

For 2,501 units or more, you must submit a Mechanical License Request Form through The Harry Fox Agency or the publisher directly. Payment terms may differ based on a one time manufacturing fee or on a per sale basis.

If your term is a per sale basis, in most cases you will be invoiced for the first 500 units. Subsequently, you are required to report quarterly on your manufacturing and distribution.

For example, if you were to manufacture 10,000 CDs, but only sell 5,000, you would only be responsible for royalty payments on 5,000 units. If you sell 5,000 units and give away 1,000 promotional copies, you are responsible for payment on 6,000 units.

Through the Harry Fox Agency, the licensee (you) is responsible to pay on all units manufactured or distributed. This is HFA's policy, but you may negotiate terms based on the amount of units sold and/or distributed rather than manufactured.

For further information regarding payment and reporting methods, please log onto www.harryfox.com or phone them at (212) 370-5330.

Master Use License

Terms are similar to Mechanical License terms in that they can differ from company to company. Some may issue a one-time manufacturing payment license, while others may offer terms based on units sold. Using the latter, the licensee (you) would then report your sales on a quarterly basis.

Film and Synchronization Rights

When copyrighted music is included in a film (or any other visual medium such as TV, commercial, music video, etc.) a Synchronization License is required.. A Synchronization License grants you the right to reproduce an audio representation of a copyrighted work with a visual image on film, tape, or other visual media.

Obtaining a Synchronization License requires licenses for the musical composition from the publisher and for the specific recording or master owned by the master holder (a record label in most cases).

An exception to this case would be if the music used in the visual medium were created specifically for this production.

Business Applications

Including third-party software applications such as Windows Media Player or Apple QuickTime on your project may require a license. These applications are considered

Intellectual property and are therefore afforded the same rights as music and literary compositions. You will need a User Distribution License to include them on your project. If you are unsure whether or not a license is required please visit the respective company's website. Most third-party software companies have downloadable licensing agreements on their websites.

IPR Form

Once we receive your completed IPR form we can begin manufacturing your project. An IPR form must be submitted regardless of whether or not you are including third party material or not.

If you are obtaining licenses, copies of all licenses should be submitted with your completed IPR form.

REMEMBER: To avoid production delays we suggest submitting a completed Intellectual Property Rights (IPR) form along with your master and other appropriate paperwork and files.

If you still have questions about completing IPR form, please contact your Customer Service Representative.

Trutone Replication: 380 Lexington Ave. 17th Floor, New York, NY 10168 | p:212.265.5636 | f:212.265.1507 | 1.888.TRUTONE | sales@trutone.com