

## Music Rights and Permissions Checklist

### INTRODUCTION

These guidelines have been issued by the MPA at the request of the ABO and are designed to aid understanding of the necessary rights, clearances and permissions needed when dealing with copyright in published musical works. The guidelines also clarify from whom licences can be obtained with the aim of avoiding misunderstandings and giving clarity for users. They do not however deal with the licences and permissions required in relation to recording rights and performers' rights.

The guidelines supplement both the Guidelines for Practice in Professional Music Hire (Revised edition 2010) and the Code of Fair Practice (Revised edition 2012). Any instance of usage not covered in these guidelines should be referred to the relevant publisher or rights holder directly.

### TERMINOLOGY AND DEFINITIONS

A basic awareness of the terminology involved when dealing with music publishing rights will assist users in understanding the various licences available and what is most suitable for their needs.

#### Copyright

Copyright is the mechanism by which creators and publishers give permission to use their work, and are paid for their work. Usually this is through the grant of a licence, which gives the user permission to use the creator's work and sets out the terms under which they are permitted to do so. Obtaining a licence is sometimes referred to as "clearing rights". In the UK and most of Europe, musical works remain in copyright for 70 years after the death of the last surviving creator, after which they are said to enter the "public domain". Creators include not only the composer, but also the librettist, arranger, translator or text author (poet or literary author) for example. Where a work has more than one creator, it remains in copyright until the contribution of the last surviving creator becomes public domain. Using Gershwin as an illustration: *Cuban Overture* is public domain since it was written solely by George Gershwin who died in 1937. *Rhapsody in Blue* is in copyright, because although Gershwin died in 1937, the arranger of the work, Ferdi Grofe died in 1972 meaning the work remains in copyright until 2042. Likewise, any work jointly written with Ira Gershwin will remain in copyright until 2053 since Ira died in 1983.

#### Types of Copyright

Copyright is the broad term used to cover a variety of different rights, which give the creator or publisher the right to give or refuse permission to use a work, to receive income, to be recognised as the creator, and to object to certain uses of their work. The copyright owner (whether creator or publisher) therefore controls the right to perform a work in public, to copy works, to communicate them to the public (which includes broadcasting and electronic transmission), to adapt/arrange works and to rent them. Any sort of musical activity can therefore involve clearing multiple rights. The most common rights are:

**Performing Rights** Performing Rights allow musical works to be played or performed in any public space or place. This includes concerts, radio and TV broadcasts, online, in shops/offices/sporting events to name but a few. Performing Rights are categorized into two types:

**Small Rights** refer to concert performances.

**Grand Rights** refer to dramatico-musical (**DM**) performances

i) A DM work is a work for which the words and music were specially written for dramatic presentation - ie. Opera, musical, pantomime, plays and so on. If you perform part of a DM work in a manner suggestive of the original (eg. costume, characterisation, scenic effect, context etc) that is a Grand Right excerpt. An excerpt or excerpts from an opera of less than 25 minutes in aggregate duration (such as a short sequence of arias) performed, without staging, in a concert is classed as 'small right'.

ii) The performance of music to accompany ballet is classed as Grand Right, because the music is combined with dance in a dramatic context whether with a theme or abstract. The use of ballet music in a concert, however, is classed as Small Right.

### **Synchronisation (synch) Rights**

When images are used with music, they are synchronized together, and the act of fixing visuals to music requires a licence. Most commonly this is associated with adverts, film and TV, however with the proliferation of user-generated content, as soon as audio-visual content involving music is created, synch rights come into play. Radio adverts, although without visuals are also classed as synch usage. Where live music is used to accompany film, although this is a usage of visuals with music, because the film is not permanently 'fixed' to the music, this is not considered synch.

### **Mechanical Rights**

Mechanical rights allow musical works to be recorded, for use either as a physical product (CDs, DVDs) or for broadcast or online usage.

**Print Rights** Wherever music or the text of a piece of music is reproduced (for example texts within a concert programme, surtitles), print rights are involved. These are administered directly by the rights holder (usually the publisher), although particularly in the case of texts, the rights holder may be the book publisher rather than the music publisher.

### **Licence**

This is the contract which grants permission for a piece of music to be used. It sets out the terms and conditions of the usage and the remuneration. Licences are issued typically either by the rights owner (usually the publisher) or by PRS for Music (on behalf of PRS - the Performing Right Society and MCPS – the Mechanical Copyright Protection Society). PRS for Music issue a mixture of 'blanket licences' which allow the licensee permission to access the entire range of repertoire registered with them and licences specifically for individual work(s). A licence issued directly by a publisher will name the pieces of music the licence applies to.

### **Critical Editions**

The editor is not normally classified as a 'creator' unless there has been considerable editorial input, often of a scholarly nature. When the editor's input is deemed to be extensive (sometimes being the culmination of many years work), the work is a 'Critical Edition'. Depending on the extent of the editorial intervention, the work (or certain elements of it) may be in copyright. Hence, it's possible for elements of a Mozart symphony or a Wagner opera to be in copyright, even though the underlying composers are public domain. This varies from publisher to publisher and ABO members are advised to check with the publisher concerned if there's any uncertainty.

### **USER NOTES**

The scenarios given have been simplified to aid understanding. In reality there may be multiple uses or nuances to the situation and the publisher can always advise on the licences that are required. A few ground rules apply:

The first and foremost consideration when dealing with rights is to **establish whether a work is in copyright**. If the copyright in a work has ended, it becomes public domain and no permission is required to use the work. As described above, and particularly in critical editions, it's important to check that all aspects of the work are public domain (composer, text author, translator) before deciding the work itself is public domain. If in doubt, check with the publisher.

**Don't confuse procurement with copyright.** Procurement of the music, either by hire or purchase, is only half of the equation. The copyright of a work is a separate matter and needs to be dealt with also. As an analogy, you can go and buy a TV, but until you have a TV licence you are not legally entitled to watch any programme. The same principle applies with music. In other words,

possession of sheet music does not automatically grant you the right to perform/record/broadcast the work. **If applicable, check the hire contract.** Whilst hire contracts are governed by contract law, they do sometimes contain pertinent information in relation to rights. Supplementary hire fees may also be due in certain circumstances.

There is **no distinction between promotional/not for profit and commercial usage.** The ability to use a short clip of music free of charge, whether it be 30 secs, 1 mins or 2 mins under 'fair use' is a myth. Publishers and rights owners may sometimes choose, at their discretion, to waive their rights to charge for a licence but this should not to be assumed under any circumstances or regarded as setting a precedent.

This document deals only with copyright related to the musical composition. **Copyright also exists in sound recordings, known as master rights.** Usually whoever makes the recording owns the master recording rights – this could be the orchestra, the performers, the broadcaster or a record label. The collection society PPL licenses the use of recorded music in public. Following a recent change in law, the copyright term in sound and of performers' rights in released sound recordings increased from 50 to 70 years from the date of first issue.

To help you ascertain which rights need to be cleared in any given situation, we have prepared a table to identify the type of work and the proposed usage. Usage has been grouped into four main areas:

#### **PERFORMANCE**

This column deals with music whenever it is performed 'in public'. This is defined as being performed outside of what could be regarded as the domestic circle or home life. In addition to regular concert venues therefore workshops, private fundraising concerts, education projects and open rehearsals are all subject to performing rights.

#### **BROADCAST**

This covers radio and TV broadcasts, primarily through established stations such as BBC Radio 3, Classic FM, BBC1, 2, 4 and Sky Arts. This document approaches rights clearances from a UK perspective. If you require any information about music used in radio or TV programmes which are to be sold and broadcast internationally, please contact the relevant publisher directly.

#### **PHYSICAL PRODUCT**

The rights included in this section deal with any form of physical product – from the traditional commercial CDs and DVDs to CDs produced as promotional giveaways or made for private use.

#### **ONLINE**

The online music licences available from PRS for Music permit a wide variety of usage including the ability for users to download permanent copies of tracks, on-demand streaming and limited/tethered downloads, webcasts and interactive webcasts. This gives a lot of freedom and flexibility for users enabling sound clips, live and on-demand streaming and downloads to be covered through one licence.

#### **WHERE TO OBTAIN LICENCES**

**Performing Rights (Small Right)** PRS for Music

**Performing Rights (Grand Right)** Predominantly the rights owner (usually publisher), though PRS for Music do license certain usages.

**Mechanical Rights** PRS for Music in the first instance. Occasionally you may be referred to the publisher directly.

**Synch Rights** Apply to the rights owner (usually the publisher) first. Occasionally you may be referred to PRS for Music.

Use		PERFORMANCE	BROADCAST	PHYSICAL PRODUCT	ONLINE	Notes
CONCERT WORK		Performing (Small Rights)	Performing (Small Rights) Mechanical Synch (if Audio-Visual broadcast)	Mechanical Synch (if Audio-Visual product)	Performing (Small Rights) Mechanical Synch (if Audio-Visual usage)	Refer to Annex 1
DMW Including concert works used in a dramatic context and Opera & Musicals	STAGED / SEMI-STAGED	Performing (Grand Rights)	Performing (Grand Rights) Mechanical Synch (if Audio-Visual broadcast)	Mechanical Synch (if Audio-Visual product)	Performing (Grand Rights) Mechanical Synch (if Audio-Visual usage)	Refer to Annex 2
	CONCERT	FULL WORK	Performing (Grand Rights) Mechanical Synch (if Audio-Visual broadcast)	Mechanical Synch (only if Audio-Visual product)	Performing (Grand Rights) Mechanical Synch (only if Audio-Visual usage)	Refer to Annex 2, the same rights clearances are required as for a staged performance.
		EXCERPTS *	Performing (Small Rights)	Performing (Small Rights) Mechanical Synch (if Audio-Visual broadcast)**	Mechanical Synch (if Audio-Visual product)	Performing Mechanical Synch (only if Audio-Visual usage)

Use Type of work		PERFORMANCE	BROADCAST	PHYSICAL PRODUCT	ONLINE	Notes
		BALLET	STAGED	Performing (Grand Rights)	Performing (Grand Rights for Audio-Visual, Small Rights for Audio) Mechanical Synch (if Audio-Visual broadcast)	Mechanical Grand Rights Synch (only if Audio-Visual product)
CONCERT (without choreography)	Performing (Small Rights)		Performing (Small Rights) Mechanical Synch (if Audio-Visual broadcast)	Mechanical Synch (only if Audio-Visual product)	Performing Mechanical Synch (only if Audio-Visual usage)	Please refer to Annex 4
(FULL WORK & EXTRACTS)						

### Annex 1

**Performing Rights** Regular concert venues are responsible for ensuring they have a licence in place to cover all musical performances taking place on their premises. If the performance is taking place in a non-traditional venue (eg. shopping centre), there is unlikely to be an automatic mechanism in place to license the performance. It is advisable to check with the promoter who will be responsible for securing the necessary licences.

**Broadcast** For radio and TV broadcasts, PRS for Music issue licences to cover both the performing and mechanical rights with the radio/TV station. Additionally with TV broadcasts, a synch licence will be required for the use of music with visuals. This is usually obtained by the production company from either the publisher or PRS for Music. Requests should be referred to the publisher in the first instance.

**Mechanical** CDs are licensed by PRS for Music by way of AP1 and AP2 licences for commercial products or AP4 licence for promotional products. NB. both the AP1 and AP2 licences include an allowance for promotional copies to be given away free of charge. For DVDs, the mechanical and synch right is licensed by PRS for Music by way of a DVD1 licence for music DVDs and AVP for general interest DVDs (eg. a documentary which uses background music).

**Online** The website owner is responsible for obtaining licences for online usage from PRS for Music. The performing and mechanical right are cleared simultaneously through a LOML, LOML+ or Online Music Licence (the level of turnover generated by the use of music determines which. Revenue generated from other sources eg. tickets, merchandising, physical products is excluded). Any audio-visual usage requires the synch rights to be cleared.

## **Annex 2**

**Performing Rights** are licensed by the rights holder (usually the publisher), even if the usage is an extract. Fees are either calculated as a % of box office or as a flat fee.

**Broadcast** Clearing the performing and mechanical right is the responsibility of the broadcaster. A synch licence will be required in the case of audio-visual broadcasts and is usually obtained by the production company from either the publisher or PRS for Music. Requests should be referred to the publisher in the first instance.

**Mechanical** CDs are licensed by PRS for Music by way of AP1 and AP2 licences for commercial products or AP4 licence for promotional products. NB. both the AP1 and AP2 licences include an allowance for promotional copies to be given away free of charge. For DVDs, the mechanical and synch right is licensed by PRS for Music by way of a DVD1 licence for music DVDs and AVP for general interest DVDs (eg. a documentary which uses background music). The publisher does have the ability to licence CDs and DVDs of opera directly, but in practice it's more common for PRS for Music to issue the licence.

**Online** The website owner is responsible for obtaining licences for online usage. The performing mechanical right is cleared simultaneously through a LOML, LOML+ or Online Music Licence (the level of turnover generated by the use of music determines which. Revenue generated from other sources eg. tickets, merchandising, physical products is excluded). If however, there is an audio-visual element then the performing right and synch rights would have to be cleared directly with the rights owner. For example, a promotional film of a performance of Britten's *Peter Grimes*.

## **Annex 3**

Excerpts are defined as being less than 25 minutes in total duration, not a complete Act and not a potted version. In these instances, a performance would be considered small rights and licences would be obtained as outlined in Annex 1.

For excerpts outside of these criteria (ie. more than 25 minutes, a complete Act or a potted version) the performance would be subject to grand rights and licences would be obtained as outlined in Annex 2.

## **Annex 4**

Where a ballet is performed in full and as extracts in a concert setting (eg. Stravinsky's Firebird) with no visual choreography, the performance is considered a small right and licences would be obtained as outlined in Annex 1.

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