

Music to Your Ears

Licensing professional music for your film doesn't have to cost a fortune

Some people have a hard time explaining rock 'n' roll. I don't think anyone can really explain rock 'n' roll. Except Pete Townshend, but that's okay. Rock 'n' roll is a lifestyle and a way of thinking... and it's not about money and popularity. Although, some money would be nice."

Jason Lee as Jeff Bebe in Cameron Crowe's *Almost Famous* (2000)



John Travolta and Uma Thurman let the music move them in Quentin Tarantino's *Pulp Fiction* (1994).

MUSIC IS ONE OF THE MOST important yet often neglected components of any successful film. Usually an afterthought, your film's soundtrack is something that should be planned for from pre-production—both from a financial standpoint and a creative one. All too often, producers put so much into the picture and editing that they lose focus on the exceedingly powerful and emotive effect that the right music can have on a film and its audience.

Quentin Tarantino is one of the most diligent moviemakers when it comes to thinking ahead about music. From *Reservoir Dogs* to *Grindhouse*, he has successfully incorporated entire soundtracks into his films, usually while still in the screenwriting stage. Consider Michael Madsen sadistically dancing and singing along to "Stuck In The Middle With You" while torturing the kidnapped cop in *Reservoir Dogs*. Or the same perfect integration of music and plotline that appears throughout *Pulp Fiction*—including the John Travolta-Uma Thurman dance sequence and Bruce Willis singing along with the radio prior to hitting Ving Rhames with his car.

When it comes to music, the two most common mistakes many moviemakers make are: **Not budgeting enough money for music** and **not securing the rights to the desired music early enough in the process**. But before you dip your toe into the sometimes choppy waters surrounding movie music, there are a few things every moviemaker should know...

COMPOSITION VS. RECORDING

A **composition** is the unique arrangement of notes and words, often reflected in the form of sheet music. A **recording** is the unique fixation of a composition in a tangible medium of expression, such as on a record or CD. When people refer to a "song," they are usually referring to both the underlying composition as well as a specific artist's recording of that composition.

MUSIC LICENSES

A moviemaker can utilize either original **composed music** or existing **source music**. Source music is generally protected to one extent or another by copyright, which is limited in duration. Music that is no longer protected by copyright law is considered to be in the "**public domain**," and thus can be freely exploited by anyone who so chooses. Music still protected by copyright, however, must be licensed from the copyright holder.

Who exactly holds the copyright to any given song, however, is not always so easy to assess. In the music world, there are certain distinct types of "**licenses**" that relate to the assorted underlying copyrights in any given song. For example, though Beethoven's sheet music is in the public domain and requires no license for use, the Boston Symphony Orchestra's recorded versions of Beethoven's works are copyrighted, so a license must be secured to use their particular version of Beethoven's music. Likewise, the sheet music for a song by a contemporary rock band may have its copyright held by one or more band members if they wrote the song or by a third-party composer who wrote the song. The actual recording, on a CD or downloaded from iTunes, is owned by the copyright holder of that recording, which may be the band

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or the recording label that produced the song.

The **synchronization license**, or "sync license," which grants the right to affix a copyrighted musical composition in timed synchronization with visual images, is what is needed to have a song play in a film regardless of whether an actual preexisting recording is being used, an actor is singing the song on camera or the song is being covered by a band hired by the producer for the express purpose of inclusion in a film. In order to secure a sync license, you need to approach the composition's copyright owner. Normally, you can find out who the publisher of a composition is by searching the **ASCAP** (www.ascap.com) or **BMI** (www.bmi.com) Websites. Remember, you will always need a sync license to place music into your film. Often, more than one music publisher may be involved with any given composition by virtue of certain shared rights that exist among those credited as the authors of the song.

The **master use license**, or "master license," grants you the right to include a specific copyrighted recording of a composition in a film. In order to secure a master license, you need to approach the record company that owns the specific recording (this information can usually be found on the packaging accompanying the recording). You will always need a master license to place music into your film but sometimes, if the cost of a particular recording is too high, you can pay for the sync license but have your own musicians re-record or cover a song for far less and get a master license from your chosen musicians. Unlike sync licenses, when obtaining a master use license you usually only need to deal with one record company (which may or may not also hold some interest in the sync license as well).

If you intend to use the songs that have been placed into your film on a separate **soundtrack album**, you must also negotiate separate rights to include the music in the soundtrack with the owner(s) of both the composition and the master recording.

THE COMPOSER'S ROLE

In lieu of, or in addition to, the inclusion of source music in a film, many moviemakers utilize a composer to create music that is designed for specific scenes.

When preparing a **composer agreement**, it is important to delineate in the contract the type of music the producer requires, the deadline for music delivery, how the ownership of the music will be attributed, the fees for the composer's services, other ongoing financial entitlements and credit. In addition, each agreement must have certain standard representations and warranties and so-called "hold harmless" language, which allows the moviemaker to be indemnified by the composer if the producer is ever sued by a third party claiming that he or she is the real author of the music.

The producer will often provide the composer with instructions as to the feel they want for the music. In addition, the producer will provide the composer with a copy of the film so the composer can precisely match the music to the action on the screen. If you can afford to and do hire a composer on a **work-for-hire** basis, this means that you own the music in its entirety. However, most composer agreements provide the composer some ongoing financial interest in the music (i.e. performance royalties). The less you can afford to pay the composer in upfront fees, the more likely it is you will not be able to create a "work-for-hire" situation and you will have to license the music from the composer instead, in much the same way that the source music was licensed. In this situation, the composer will retain ownership of the music but allow the music to

Article written by David Albert Pierce
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PIERCE LAW GROUP LLP

9100 Wilshire Boulevard
Suite 225, East Tower
Beverly Hills, California
90212-3415

Telephone: (310) 274-9191

Facsimile: (310) 274-9151

be exploited in those media for which the producer has licensed the music. Ideally the license should be for "any and all media or formats presently known or hereafter devised throughout the universe in perpetuity."

Normally, if you employ a work-for-hire composer, he or she will get a "Music By" credit and those similarly situated composers who provide relatively less music for the film may get an "Additional Music By" credit. If you simply license third-party music, you will normally accord the standard song credits with which we are all familiar from the end crawl of films and which normally state the song title, writer(s), performer(s), owner(s), and performing rights society affiliation.

A **composer fee** will depend upon whether music and/or lyrics are being contracted for, factoring in the "size" of the film and its release (studio broad release, limited independent film release, festival release), the music budget and the reputation of the composer(s). If one party is writing and recording the music, it is likely that the fees are delineated according to services provided (recording fee versus writing fee) and who has to pay for the costs to make the recording itself.

LICENSING FEES

License fees are negotiated based on numerous factors, including the duration and number of uses of the music, as well as the type of use of the music. For example, use of the music to play over the credits may cost less than use in the body of the film, which may cost less than use in the body of the film with the actor referencing the song in his or her dialogue and/or singing the song. Other factors used to determine the licensing fee include the budget of the

film and for which manner of exploitation you require the license (theatrical, festival, DVD, Internet, ads, etc.). It is important to fully consider all media in which your film—and thereby, the song—may be exploited and to negotiate for those contingencies in advance in a so-called "**Step Deal**," which will give you options that you can exercise for given sets of rights.

Your film may only be playing at a festival now, for which you have negotiated a **festival license**. But if you are fortunate enough to have your film seen by the right person at a festival who wants to distribute it nationwide theatrically, you would have that option fee already determined for you rather than having to go back to the rightsholder(s), who may decide to hold you over a barrel knowing you can do almost nothing but pay them or edit the song out of your film at great expense. Many independent films have suffered greatly as a result of an inability to acquire the music at the time a distributor steps in. Often, a moviemaker's entire advance goes directly to the music owners—or, worse, the advance is not sufficient to cover the purchase of the music rights. A smart producer plans in advance and anticipates the picture's needs.

There is no hard and fast formula for deciding how much to budget for music in your film, but a good music supervisor or line producer should be able to help you with making this determination. A music supervisor's job is to understand (or find others who understand) different styles of music and how they accent the film project, from where such music can best and most efficiently be obtained, to how much it should cost to do so.

Remember, music matters. Think about music early and comprehensively and get the rights locked down *before* you run out of money! **MM**

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