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# Synchronization Licensing For Film And Television

business

*The views and opinions expressed in this article are not meant to substitute for legal advice, which should be sought in each particular instance.*

## Introduction

We normally receive at least one license request per day for use of our client's music in a film or television production. This article outlines some of the items you need to consider when dealing with these licenses.

## Two Licenses Required

When a film or television production company wants to license a song for use in their production they must secure two synchronisation licenses: one for use of the master *and* a second license for use of the composition. Normally the master owner/record company retains the right to license the master recording for the desired usage (License #1) and a publisher/songwriter will grant the license with respect to the composition (License #2). The same individual can issue both licenses if they own the master and they wrote the song for example provided they have not assigned this right to someone else.

For example: "Oh, Pretty Woman", performed and written by Roy Orbison was used in the movie *Pretty Woman*. The film production company needed to approach the master owner to secure the master rights (License #1) and approached Orbison's publisher to secure the rights to the composition (License #2).

Consider what would happen if the film production company wanted Van Halen's version of the same song. The film production company would need to approach the owner of the Van Halen master for the master rights (License #1) but would still need to approach Orbison's publisher to secure rights to the composition (License #2).

You will notice that sometimes film or television companies will use "knock off" or cover versions of popular classic songs to avoid paying the higher costs of original masters.

## Fees

Fees vary widely from \$0 to hundreds of thousands of dollars. The fee will depend on a number of factors including the following (i) The music budget for the project. In most cases if the budget for a film is substantial the music budget for the film will be substantial as well. If there are well known

actors or executives associated with the production this would tend indicate a larger budget. (ii) Whether it is a background or foreground use. If your song is in the far background on a jukebox while dialogue is happening over top of your music, the chances are your fee is going to lower than a foreground use. A good example of a foreground use would be where Tom Cruise sings "Old Time Rock n' Roll" by Bob Seger in *Risky Business*. This is clearly an integral part of the scene and would lead to a higher fee. (iii) How long the song is featured in the project. If the song is playing for a long time or if it reoccurs in the production your fee will tend to be higher. (iv) Whether worldwide/perpetual/video rights are required. Often the production company will request "worldwide/perpetual use" or "video rights" to allow themselves the most flexibility in exploiting the production; however, these are negotiable terms which will impact on the upfront fees paid. (v) Bargaining power. Every negotiation is subject to bargaining power. A higher profile artist will often demand higher fees than an unknown artist in need of exposure. (vii) Trailer/commercial rights. Production companies may desire to retain the right to use the song in the trailer of the production or use it in the advertising campaign. This will normally attract an option extra fee.

Production companies will often argue that the promotional value for the artist should be taken into account when negotiating these fees in addition to the performance fees (discussed below). This is a fair point; however, consider how to maximize this "promotional value" by perhaps requesting special screen credit to draw attention to your song. Many television shows are highlighting artists by providing special credits or actually playing an artist's video while end credits scroll by. Other artists, rather than taking cash, might barter for the production company's services in making a video or negotiate rights to use part of the production in an actual music video.

Often the fee for the master license is the same as the fee for the composition but that is not always the case.

## Performance Fees

Many production companies will point out that the performance fees from usage can often outweigh the upfront synchronisation fees they pay for use of a composition. The Society of Composers, Authors and Music Publishers of Canada (SOCAN) collect and distribute monies collected from

broadcasters who report their usage to SOCAN. Money is also collected when music is used in a theatrical release.

For example, if you license a song to a Canadian television production for \$500 you might see more money from SOCAN following the dates the actual program is aired. These monies are tracked and paid for years and years on a worldwide basis.

(See [www.socan.ca](http://www.socan.ca) for more information on this topic).

## Soundtracks

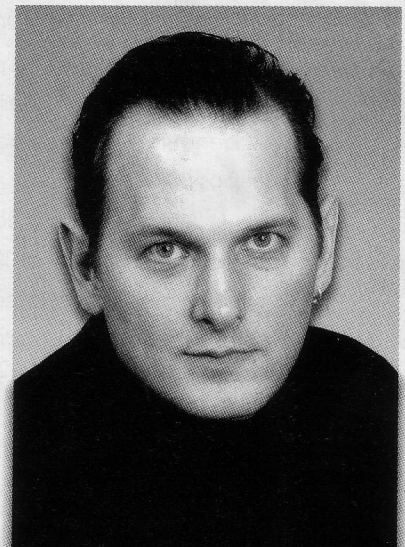
Many licenses do not involve a soundtrack component. This aspect is often addressed in separate agreement that we might review in a future article.

## Conclusions

It is very hard to skilfully negotiate the terms of these agreements unless you are familiar with the industry standards and the parameters for these types of deals. It is important to know the relatively small circle of players in this world in order to maximize the opportunities. An experienced music publisher or, of course, a music attorney can be a valuable asset to review and negotiate these terms.

A great, in-depth review of this topic can be found in Jeff and Todd Brabec's book, *Music, Money and Success*.

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