Kohn
On Music Licensing
Third Edition

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The Art of Music Licensing

Aspen Law & Business
A Division of Aspen Publishers, Inc.
New York  Gaithersburg
of the Theater Guild put on an in- 
draperies and curtains for a new-
rs and Lorenz Hart contributed sev-
nance. Max Dreyfus called Rodgers 
clusive songwriter agreements with 
dributed five songs to the Green-
until 1928 when Irene Bordoni's 
ocative French accent caused Max 
to his already well stocked staff of 
arms, Inc. office at 62 West 45th 
osers made it a habit to meet at 
George Gershwin play the piano. 
roadway music publisher, whose 
ur Schwartz, Bert Kalmer, E.Y. 
Herman Hupfeld, Howard Dietz, 
udience at New York's Warner 
utter his famous, 'Wait a min-
thin' yet. Wait a minute, I tell 
ths after his release of the 
er, film producer Jack Warner 
c would play in the making of 
ros had purchased the entire 
Music Corporation, and Max 
ould never be the same.

III. SOURCES OF MUSIC PUBLISHING INCOME

The sources of a music publisher's income can be divided into 
three categories: (1) major sources of income (i.e., where the largest 
share is derived), (2) secondary sources of income, (3) and emerging
sources of income (i.e., other sources that may be minor today, but could play an important role in the future of music publishing).

The *major* sources of music publishing income include the following kinds of uses:

- Sound recordings
- Public performances
- Theatrical motion pictures
- Television programs
- Videocassettes and video laserdiscs
- Advertising

The *secondary* sources of music publishing income include:

- Printed music
- Foreign subpublishing
- Radio programs (broadcast and closed circuit)
- Music boxes and other consumer musical products
- Non-theatrical motion pictures
- Non-theatrical videocassettes and laserdiscs
- Dramatic performances
- Dramatic adaptations

The *emerging* sources of income include:

- Computer software, multimedia, and new media products
- Digital transmission (e.g., Internet)

The business and legal aspects of each of these sources of music publishing income are discussed in the chapters which follow, organized by the type of license agreement used as the basis of the under-
that may be minor today, but the role of music publishing).
ishing income include the fol-

lying transaction. These sources of income and their related licenses are summarized below:

A. Major Sources of Income

Music used in sound recordings, and distributed in compact discs and audiocassettes, is permitted by the grant of what is known, for historical reasons, as a mechanical license, and these generate mechanical royalties. Music that is publicly performed on, for example, radio and television, is generally permitted under a performance license issued to the user on a blanket basis by a performance rights society, which pays performance royalties to songwriters and music publishers. Music that is embodied in copies of motion pictures for theatrical distribution generate synchronization royalties, the licensing for which is granted in a theatrical synchronization license. Music that is embodied in copies of television programs for television broadcast also generate synchronization royalties, the licensing for which is granted in a television synchronization license. When a previously produced theatrical motion picture or television program, or newly produced video program (e.g., nature film or music video), is embodied in videocassettes or laserdiscs for home distribution, a separate license, commonly called a videogram license, is required. When music is used as part of a commercial advertising campaign a special commercial advertising synchronization license is required.

B. Secondary Sources of Income

Music used in sheet music, music folios, and other printed copies of music is permitted by the grant of a print license, and these generate print royalties. Income from sources outside of the United States

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2 For a full discussion of mechanical licensing, see Chapter 12.
3 For performance licensing, see Chapter 17.
4 For theatrical synchronization licensing, see Chapter 14.
5 For television synchronization licensing, see Chapter 14.
6 For videogram licensing, see Chapter 15.
7 For advertising in television, radio, and print, see Chapter 20.
8 For print licensing, see Chapter 11.
is generally derived from agreements with international music sub-publishers, who engage, in their local countries, in many of the same licensing activities as the music publishers they represent. Music used in sound recordings that are intended to be used solely for public radio or closed-circuit broadcast (e.g., the music you hear in elevators and on airplanes) is permitted by the grant of what is known as an electrical transcription license, and these generate electrical transcription royalties.

When music is embodied in a music box or similar musical product, such as a talking doll or singing greeting card, a music box license or consumer musical product license is required. Music used in promotional or training videos produced by corporations is licensed under a non-theatrical synchronization license and when these videos are distributed in videocassette or laserdisc form, a non-theatrical videogram license is required.

Though rarely a significant source of publishing income, a dramatic performance license is required by anyone who wishes to render a dramatic performance of a song — that is, when the song is used to carry forward the plot or story of a dramatic work, such as a motion picture, television program, or theatrical play. A dramatic performance license should not be confused with a grand performance license, the latter of which is not a license strictly for music — it is a license to perform a grand opera or grand musical play, or portion thereof. Finally, if you desire to produce a dramatization of a musical composition, or more accurately, its lyrics (i.e., much like one would produce a motion picture adaptation of a novel or short story), you would require a dramatic adaptation license.

C. Emerging Sources of Income

In the emerging sources of music publishing income may be found the very beginnings of the future of the music publishing business.

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9 For electrical transcription licensing, see Chapter 13.
10 For videogram licensing, see Chapter 15.
11 For non-theatrical synchronization licensing, see Chapter 14.
12 For non-theatrical videogram licensing, see Chapter 15.
13 For dramatic performance licensing, grand performance licensing, and dramatic adaptation licensing, see Chapter 18.
transcriptions include recordings of radio drama music, music performances by a studio orchestra, and the like. These transcriptions are used by radio broadcasters, television stations, and others for the purpose of broadcasting or recording their programs.

A. Mechanical Licenses

In the music industry, the following are the primary forms of licenses customarily used:

1. Mechanical Licenses

A mechanical license is a permission that authorizes one to make a mechanical reproduction of a musical composition. This license is used for the purpose of distributing a recording of the composition to the public.

B. Performance Licenses

A performance license is a permission that authorizes one to perform the composition in public.

C. Reproduction Licenses

A reproduction license is a permission that authorizes one to reproduce the composition in a tangible medium.

D. Digital Licenses

A digital license is a permission that authorizes one to distribute the composition in a digital format.

E. Copyright License

A copyright license is a permission that authorizes one to reproduce, distribute, perform, or display the composition for the purpose of making a derivative work.

F. Royalty Licenses

A royalty license is a permission that authorizes one to reproduce, distribute, perform, or display the composition for the purpose of earning royalties for the use of the composition.

G. Public Performance License

A public performance license is a permission that authorizes one to perform the composition in public for the purpose of earning royalties for the use of the composition.

H. Mechanical License

A mechanical license is a permission that authorizes one to make a mechanical reproduction of a musical composition, such as a sheet music and printed music. This license is used for the purpose of distributing the composition to the public.
ductions, and background music for commercial advertising made specifically for radio broadcast, as well as recordings compiled for use in syndicated radio programs. Electrical Transcription licenses are discussed at length in Chapter 13.

D. Synchronization Licenses

A synchronization license is the form of permission that authorizes one to make mechanical reproductions of a musical composition, that are accompanied by a motion picture or other audiovisual work, for use in connection with motion picture theatrical performance and television broadcast. Examples of such reproductions include, motion pictures, television programs, and music videos, embodied in any form, such as film, tape, and optical laser disc. Technically, the music is not always "synchronized" or recorded, as some licenses say, "in timed relation with" the motion picture, but these terms convey the notion that the permission to make reproductions of the music is strictly limited to copies embodying the specified motion picture together with the music. Most synchronization licenses contain a further restriction relating to how the copies of a motion picture which embodies a recording of the licensed music may be distributed: these licenses limit the distribution of the motion picture to only those copies that are directly related to effecting the performance of the picture in motion picture theaters and on television. These licenses may impliedly or explicitly restrict any other form of distribution, including distribution on videocassette laser discs for the home video market. Synchronization licenses are discussed at length in Chapter 14.

E. Videogram Licenses

A videogram license is the form of permission that authorizes one to make mechanical reproductions of a musical composition, that are accompanied by a motion picture or other audiovisual work, and which may be distributed on videocassette, optical laser disc, or other home video device for distribution into the home video market. Videogram licenses are discussed at length in Chapter 15.

F. Commercial Synchronization Licenses

A commercial synchronization license is the form of synchronization license, that authorizes one to make reproductions of and broad-
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Commercial advertising made special as recordings compiled for use in Transcription licenses are discussed in Chapter 14.

Form of permission that authorizes one to make mechanical reproductions of a musical composition in connection with the distribution of a commercial product. See Chapter 20 for a more detailed discussion of licenses for the use of music in commercial advertising.

G. Musical Product Licenses

A musical product license is the form of permission that authorizes one to make mechanical reproductions of a musical composition in connection with the distribution of a commercial product, such as wind-up music boxes, singing dolls, and musical greeting cards.

This form of license may resemble either a mechanical license or a videogram license, depending on whether the use of music in the product is accompanied by audiovisual images. See Chapter 21 for a more detailed discussion of musical product licenses.

H. Multimedia License

A multimedia license is a “catch-all” term for the form of permission that authorizes one to make reproductions of a musical composition in connection with the distribution of multimedia compact discs, computer software, karaoke, and other new media devices. See Chapter 22 for a more detailed discussion of these emerging forms of licenses.

I. Digital Transmission Licenses and Digital Reproduction Licenses

The forms of licenses that authorize one to digitally transmit musical works and to reproduce them by means of digital transmissions do not have generally accepted names yet, but they are discussed in Chapter 23 on Licensing Musical Works and Sound Recordings on the Internet.

J. Performance Licenses

A performance license is a permission that authorizes one to perform a work publicly. Performance licenses are discussed in Chapter 17.
K. Dramatic Performance Licenses and Grand Performance Licenses

A *dramatic performance license* is a permission that authorizes the performance of a song dramatically — that is, when the song is used to carry forward the plot or story of a dramatic work, such as a motion picture, television program, or theatrical play. A *grand performance license* is not a license in music at all — it is a license to perform a grand opera or grand musical play, or portion thereof. The rights that form the basis of these types of licenses are discussed at length in Chapter 18.

L. Dramatic Adaptation Licenses

A *dramatic adaptation license* is a permission that authorizes one to make a dramatization of a musical composition, or more accurately, its lyrics. Just as a motion picture can be a dramatic adaptation of a novel, a motion picture or television program may be a dramatic adaptation of the lyrics of a song. Although a motion picture adaptation of a song may include a performance of the song, a dramatic adaptation license does not authorize one to render a dramatic performance of the song, a license for which must be acquired separately. This type of license is discussed in Chapter 18.

X. DIFFERENCES IN THE RIGHTS AND PRIVILEGES OF HOLDERS OF EXCLUSIVE RIGHTS AND NON-EXCLUSIVE LICENSES

The copyright law entitles the owner of any exclusive right, to the extent of that right, "all of the protection and remedies accorded to the copyright owner."27 This means, for example, that a person holding an exclusive right to do something, such as perform a particular composition on television may sue in his own name anyone who infringes that particular right, even though the undivided copyright remains in the hands of someone else. By contrast, a non-exclusive

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27 17 U.S.C. Sec. 201(d)(2).