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MUSIC, THE UNIVERSE AND EVERYTHING A CHANNEL 4 GUIDE TO MUSIC

There are three things to consider when using music - the composer (the lyric and the dots), the recording of that song, and the performers who play on it.

Terminology / Companies

CD - Compact Disc, shiny silver disc with hole in it.
PRS - Performing Rights Society (www.mcps-prs-alliance.co.uk)
MCPS - The Mechanical-Copyright Protection Society
PPL - The Phonographic Performance Limited (www.ppluk.com)
BPI - British Phonographic Industry (www.bpi.co.uk)
VPL - Video Performance Limited (www.musicmall.co.uk)
ASCAP - American Society of Composers, Authors and Publishers (www.ascap.com)
BMI - Broadcast Music Incorporated (www.bmi.com)
MU – Musicians' Union (www.musiciansunion.org.uk)

Terminology / Terms

- **Synchronisation** or **Synch** rights - the right to lay music over moving image for inclusion in your programme.
- **Broadcast** or **Performing** rights - the right to broadcast a programme that contains music.
- **Dubbing** rights - the equivalent of synch rights for recordings. Also known as **Master** rights.
- **Grand** rights - the broadcast of **dramatico-musico works**, i.e. opera, ballet or a scripted dance to music.
- **Public Domain** or traditional works – out of copyright.

1) Music Publishing

There are two rights to consider when using music - Synchronisation and Broadcast rights. Producers are responsible for clearing and paying the Synch fee to the music publisher who represents the songwriter (or the MCPS in the cases where they handle the UK Television licensing for a few of the publishers) and the Broadcaster (Channel 4) is responsible for having a blanket licence with the PRS to allow it to broadcast programmes containing music.

The standard Channel 4 rate is £107 per thirty second unit for 2 UK transmissions (plus 50% for third tx). *Under no circumstance, other than titles music, should producers pay more than this rate.*

For education programmes made for the schools slot from 9.30am–11.59am, the £85 rate will cover the obligatory 8 transmissions over three years.

Please note, music must be cleared and paid for prior to first broadcast/use. See IPC Scheme for the rates for E4 and More4 commissions and more details.

Dramatic Musical Works

The classical publishers have a different rate for these works. The Synch fee is £80 *per minute* that technically clears unlimited showings in perpetuity, however some publishers

clear a minimum of two transmissions. The publishers also charge a 'hire fee' for copying/providing score and parts, however for long works we argue that this fee (approx. £17.30 per minute) should be 'thrown-in' with the Synch fees. 'Dramatico-musico works' is the one area not covered by the PRS Blanket. A Broadcast or Grand rights payment is due per transmission which the broadcaster will help you negotiate and pays itself outside of the programme budget. The Channel 4 rate is currently £105 - £117 per transmission per *minute* (similar to the BBC rate) for peak-time. There is a 75% discount for schools, night-time showings or 10% of the rate for screenings on More4 over a two year period from first Channel 4 showing.

Copyright Control

There is a myth that if a piece of music is in 'copyright control' it does not need to be cleared. This is not true. It means that the writer or writers have asserted their rights as composers but they do not have a music publishing deal (or their deal is not yet registered with the MCPS). The composers must be contacted via the PRS, record company, manager or band for clearance in the usual way. Any clearance obtained in writing must include an obligation for the writer/writers to become PRS members so that Channel 4 can rely on its PRS blanket licence for the broadcast rights and the writers do not miss out on their right to receive PRS income.

Await Claim

Where a writer is unpublished and untraceable through the routes described above and via other collecting societies/MCPS equivalents notably ASCAP, BMI and Harry Fox Agency in America (they have very useful websites), a producer can only 'await claim' i.e. put aside the fee and wait to be contacted after first television broadcast with Channel 4's approval and carefully documented, typed notes covering the producer's efforts to trace the writer.

Sample Suspense

Copyright control can also mean that the ownership of a musical work is in dispute. This often means that a sample has been used and the publishers of the 'sampled' work are arguing with the publishers of the writers (that have used that sample in their song) over what proportion of this newly created copyright is theirs. Some publishers and writers view a song sample as taking the best bit of their song and using it in a newer, inferior work to make it sound better.

When clearing a song in sample suspense, you need the approval of all the interested parties and the appropriate percentage of the publishing fee needs to be paid. If the dispute is at an early stage of negotiation, the producer will need approvals from all parties and will need to hold the money in a suspense account or lodge it with one of the publishers until the dispute is settled. There is no guarantee that all parties will agree to the clearance. American composers with small percentages of a song through writing or sampling are never very motivated by a share of £85, especially the bigger writers. US rates range from \$500-\$2,000 for minimal clearances and so it is always wise to source music registered in this country with a UK publisher.

Favoured Nations

When clearing music and obtaining licences from music publishers, look out for these clauses and delete where possible. This clause means that if another publisher gets a higher fee then the publisher invoking 'favoured nations', they also get that higher fee. (NB Also, avoid clauses in contracts granting them internet use of programme clips, copies of programmes etc.).

2. Recordings

There are two rights to consider when using recordings - Dubbing and Broadcast rights. Channel 4 has a joint Dubbing and Broadcast agreement with the PPL that covers commissions, repeats and sales across all of its channels. There is no re-charge back to the producer from the use of this blanket. If you choose a recording that is owned by a PPL member, there is no cost to your production budget for use of the track (only publishing rights and possible MU fees). There is also no need to contact the record company or get anything in writing since this agreement is there to save them work as well as you. You would only need to contact the record company, or PPL, if there is any doubt over whether they own the recording, or that they are a PPL member. (NB: the record (p) copyright symbol indicates the copyright owner of the recording but be wary of compilation albums where the (p) and (c) copyright symbols refers to the album not the individual tracks).

Beware of areas that are not covered by the PPL agreements because there would be a cost to your budget; notably imports (not released by a UK company); Film and TV soundtracks (film or television producers tend to own the recording (dubbing) rights to the score rather than the record companies who release the album of that score); tiny bedroom labels; and CD bought in copyright black-spots like Asia. The PPL agreement specifically excludes film and television music i.e. music specially composed and recorded for films and programmes. Unless the record label can confirm it owns a particular piece and has registered ownership with PPL, film and television music cannot be used without the express permission of the copyright owner.

There are also certain artistes/bands that retain their Dubbing rights despite having record/admin deals. The Beatles, The Rolling Stones & David Bowie being such cases. They are currently covered by the status of their membership and must be checked with the PPL every time of use.

3. VPL

Since 1st July 2005, Channel 4 has a Dubbing and Broadcast blanket agreement that allows use of the audio recordings and visuals in music videos registered with a VPL number. The agreement covers commissions, repeats and sales across all of its channels. There is no re-charge back to the producers, no MU fees, but producers are still responsible for clearing the music publishing rights.

Exceptions

There are occasionally some music videos that are only made available for limited sale periods and Peter Kay/Comic Relief's "Road to Amarillo by Tony Christie" is one such example and is currently withdrawn from VPL repertoire. Channel 4's VPL blanket now makes use of music videos much easier, however producers must be reminded that, outside of our family of channels, the videos have to be cleared individually with each record company and overseas television or especially DVD exploitation may not be possible/affordable as prime record industry assets.

Rules

The most important point to remember is that music videos cannot be 'tampered with' in any way. The only exceptions are: 1) videos can only be played mute for editorial reasons i.e. to allow a voice-over to discuss it and related matters and library or score can only play over a mute video if that music started in the previous sequence with the voice-over; and 2) with a montage of music videos. The only music that can play over the montage would be one of the music video tracks from the montage.

4. Musicians

Bands and artistes are directly contracted to their record label and share in the various incomes that the record company receives including PPL Dubbing and Broadcast revenue. MU session players (not in the band) pre-1998 are not cleared for use in film and television programming (and the same is true many lesser 'hits' released after 1998 due to budget constraints). The current PACT/MU agreement provides for a payment of **£20** per 30 seconds to clear any and all MU session players on the record for World use. (This does not apply to music 'promo' videos where all performers, musicians and contributors are bought out unless you are notified otherwise.) This is covered in Appendix C and refers to background use of music, however it also covers featured music where the music is played on a mechanical device for dramatic effect, like actors listening to car radio, jukebox etc. Check sleeve notes and the country of recording for details of musicians. *NB Please see Signature Tunes.*

5. Titles Music - Signature Tunes

Technically this is music that opens and closes each episode of a series and fits around the advert bumpers. Publishers view this as any music that goes over 'credits'.

The IPC rate for music covers, featured and background music however publishers tend to charge more for titles music. (Most publishers charge between 50%–100% extra). It is suggested that you add up the 30 second units of music over the series and offer a lump sum for the series based on this rate, or 'rounded' up slightly to make more attractive to 'bigger' writers. There is a myth still supported by some publishers that titles music use of an existing song prevents them from doing advertising deals. This is incorrect and should be referred to Rights.

Channel 4's PPL Dubbing agreement only covers records as titles for up to three episodes and thereafter a rate has to be specially negotiated but should not be more than the publishing fee. Please consult with the Rights Team before negotiating with the record companies.

The musicians will need re-clearing under the provisions of the MU agreement, by use of the basic session fee, or signature tune payment, or combined use fee. This is not a cheap or simple process so commissioning music is always the safest option for titles music.

6. E4 & More4 & FilmFour

E4 is Channel 4's entertainment channel that transmits by digital terrestrial television (DTT), digital satellite, digital cable and analogue cable with a reach of 4-6 million homes across the UK and Eire. Programmes commissioned by Channel 4 and licensed to E4 are cleared under Channel 4's Secondary MCPS and PPL agreements for music.

For E4 only commissions, the music publishing fee is £78 per unit to clear eight transmission days (2 transmissions over 24 hour period with a one hour time-shifted showing on each for E4+1). The record rights are covered by our extended PPL Dubbing and Broadcast blanket. Should the programme then transfer onto the main Channel 4 service, the £107 rate will automatically apply however the PPL agreement still covers the recordings. There is discounted library rate of £26 per 30 second unit that clears unlimited transmissions in perpetuity. Titles music rate would then be up to £156 per 30 second unit for use of commercial music.

VPL deal covers all channels.

The same is true of our recently launched More4 channel. In the Summer of 2006, FilmFour will move on Freeview and will also be party to the same music arrangements.

7. New Media

Channel 4's production agreement requires producers to clear, or make clearable, certain rights for Channel 4 services. We have extended our MCPS/PRS, PPL and VPL deals to make this area as simple as possible for our producers. Once a piece of music has been cleared for use in a programme via an MCPS member (UK publishers) and via Channel 4's PPL/VPL agreements, then the programme or clips from that programme (trailers have the same rules) are covered for use on our online and mobile services.

This is a very complicated area summarised into one paragraph so always contact the Rights Team for more information.

The same rules apply for Channel 4 programmes transferred to E4 or More4.

8. General Questions Asked:-

How does Channel 4 differ from the BBC or ITV?

The important difference is that Channel 4 does *not* have a UK music publishing blanket for television production with the MCPS but the BBC and ITV companies do. All commercial music must be pre-cleared with the music publisher (or writers' representatives if they do not have a publishing deal) *before* it can be included in a programme. Channel 4's Rights Team is available to advise on music clearances at all times and will suggest alternatives when musical choices prove 'difficult'.

Music in Co-Productions? Channel 4 International's MCPS Secondary Agreement? DVD clearances?

Even though Channel 4 does not have a domestic, terrestrial television music blanket agreement, it does have a secondary agreement that covers Channel 4 International's international sales and UK non-terrestrial deals. The full rights covered are: Worldwide All TV and Non-theatrical sales including North American (USA & Canada). Once the music publishing rights have been cleared for initial use (2 UK) on Channel 4, the agreement is operational and managed by the Rights Team. This covers all sales including pre-sales but not co-productions. Co-producer territories must be cleared from the budget. Rights Team can advise appropriate rates.

We also have UK MCPS (AVP) deal that automatically covers Video/DVD release, and standard rates with all the record labels.

Trailers, Promotional use – Who Clears?

Channel 4 does not have a UK music blanket for its producers however it does have a modest MCPS agreement for trailers, on-air promotion, bumpers and interstitial material which includes Channel 4 produced programme material like T4. Producers do not need to clear trailer use themselves but should always liaise with Channel 4's Music Services (Alice Godfrey and Paul Lewis).

Cue Sheets

Please note that cue sheets must be entered onto the Soundmouse music reporting system. For details please call Paul Lewis or Alice Godfrey on 020 7306 8404 or 020 7306 8471.

Producers must deliver full electronic music cue sheets for each programme prior to broadcast (or within 7 days of broadcast for programmes recorded live or as-live). This is so that Music Services can declare the music use to the PRS and PPL as part of its regular and obligatory music returns. Failure to do so promptly can incur penalty payments that Channel

4 is happy to share with the producers! Producers must, anyway, complete cue sheets containing full details of each song, each duration used (no aggregation), writers, publishers, artist/band, record company, music codes, etc. as part of its contractual obligations to the music publishers and their right to be covered by Channel 4's PPL agreement.

Specially Composed Music - How to Contract Composers.

When producers are commissioning new music for a production, they should use the current PACT/Composers Agreement (2004). It falls into two parts and gives the user the ability to buy-out the music and obtains a full assignment of copyright, or acquires an exclusive worldwide in all media in perpetuity Synchronisation licence. In both scenarios, the 'recording' created is bought out and owned by the producer. Both agreements acquire exclusivity in perpetuity. Some writers do not want to grant exclusivity in perpetuity because they will want to re-record and use in other projects. If a producer is not acquiring the copyright, a three year period is perfectly acceptable for most projects except long running series.

Specially Composed Music - Should you acquire the publishing rights in a composer's music? Sub-Publishing Deals?

If the producer pays a 'reasonable' commissioning fee, then the first option could be to acquire the copyright in the music. This should only be done if a producer is planning a business of commissioning and exploiting music via a sub-publishing deal with a music publisher, employed to collect PRS income and generate other revenues through Synch use. Under PRS rules, if a commissioner acquires rights and 'sits' on them, the writer can request a change to the mandatory minimum split of 6/12 to 10/12 in their favour after an initial 12 months. The Rights Team can advise on contracting composers and negotiating shares of secondary income.

Where the commissioning fee is low (in terms of a fee for writing the compositions, covering recording costs, performers etc. - and there are no hard and fast definitions of 'low' - this is just defined by negotiation with the writer or writer's agent but I would recommend that costs should be less than 50% of the fee), the producer should take the second option of the Synchronisation licence.

Dealing with Composers with Publishing Deals?

Many composers have music publishing deals. This does not mean that composers cannot be employed, or assign a modest share of publishing rights if plied with a generous commissioning fee, as most of these deals are non-exclusive. However, it does make these rights more difficult to obtain. In the case where producers are contracting artists or bands with exclusive publishing deals, a waiver of rights from the publisher will be required before a commissioning agreement can be drawn up and signed by the artist. The same is also required from the artist's/band's record label.

Channel 4 Music / Sub-publishing

Channel 4 has its own sub-publishing arrangements and offers a service to producers and writers. For more details contact the Rights Team. *In our day to day dealings with composers, we should always be mindful of their talents and careers, and not be an obstacle to their possible future in the commercial world of music.*

MCPS – Mini-blankets – Fact or Fiction?

For non-biography, artist-led, music commissions like 'list' shows where the music use is not contentious, MCPS offer mini-blankets via Rights for producers using over 100 units of music. Each blanket needs to be approved by the MCPS Board however when agreed. MCPS repertoire music can be used in C4 programmes with no consent for £85 per 30 second unit

plus 12% commission (music can be aggregated per programme and only the first three minutes of each song per episode is charged).

Production Music / Library Music – Pros and Cons?

Library music is specially recorded to be used in film, television and advertising and requires no consent, only payment. Companies like Extreme, KPM, BMG, Zomba etc. specialise in all kinds of themed music from classical to jazz to rock to dance etc. These are not commercial recordings however they are themed to invoke a mood of different musical genres. Over the last decade the quality of the music has vastly improved from libraries commissioning professional orchestras to re-record out of copyright classical works and commissioning commercial writers to record music (usually under pseudonyms). There is no pre-clearance necessary for library music.

Producers just need to obtain a declaration form from the MCPS to apply for a licence and the fee of £47 per thirty second unit covers unlimited UK rights in perpetuity, or £30 per 30 second unit for E4, More4 or FilmFour. MCPS does not allow aggregation or negotiate discounts unless a producer pre-agrees a bulk deal across a year of programming and over 100 units of library music. However, the libraries are currently offering a per episode rate of £500, unlimited music per 30 minute programme or £800 for an hour. *We have expressed our concern that, generally, all of these rates are too high so watch this space.*

Buy-Out Music Libraries – What's the Deal?

There are new libraries not registered with the MCPS, like Audio Network, who charge a small fee per episode for unlimited use of music for World All TV and New Media exploitation in perpetuity. Another small fee clears all DVD/mechanical uses, and they offer yearly fees per producer instead of per programme fees. They don't have the repertoire available from MCPS Libraries, however they do give producers tremendous flexibility in programme making and budgeting, and editing 'international versions' for exploitation. In days when there is not always time to brief and commission a composer they offer a cheap but valuable alternative.

Copyright Term

The life of a composition or literary work is seventy years from the end of the year in which the writer died. In the case of co-authored works, copyright will subsist until seventy after the last writer dies. This explains why some of George and Ira Gershwin's music is still around, boldly protected by Warner Chappell.

The copyright term for recordings (and audio-visual works) is fifty years from first release which means '78' gramophone recordings are out of copyright if used from the original disc. However, check very carefully when using old recordings sourced from CDs. Many record companies protect their catalogue by re-mastering, and digitising the recordings which they claim creates a new copyright. See the Rights Team for more information. Currently, the record industry bodies are campaigning for 95 years of protection.

Live Music

Bands can be booked to appear on shows via their record company and cleared for two Channel 4 showings via release forms and MU vouchers however if the producer wishes to own the recorded material, negotiation must take place with the record company, or the BPI, very early on in the pre-production to allow time to get the rights you need. Record companies inevitably have exclusive deals with their artists and they will fight to retain rights in all filmed material. See Rights Team.

Is there really such a thing as unclearable music?

Given the right project, with the right contacts & support, a lengthy production period and a huge cheque book, most things are possible. However, most of us are not in this position and

so many major bands, artistes and writers, especially American, cannot be cleared. Most writers are now very interested in film, television and advertising use and publishers sign them often with promises of this grand secondary exploitation when record sales are slow. This means that, more and more, publishers have to obtain writer consent before the music is used. Clearances can take upwards of two weeks to obtain and with the recent music mergers this process can take even longer. Music should therefore be pre-cleared as early on as possible and never left to last minute editing in the cutting room. (NB publishers now have fairly stiff penalty payments for music not cleared prior to broadcast, irrespective of how slow they have been getting consent from the writers. Music should never be used without consent.)

Music Supervisors & Music Courses?

There comes a time in everyone's programme-making career when they wonder whether they should use a music supervisor. There are certain feature films and music biographies/series where a supervisor would be invaluable, if you can afford the cost to your music budget, and you are happy their expertise, music knowledge of contracts and contacts in the music industry are better than your own. However, there are numerous individuals in the industry professing to be supervisors, offering an enthusiasm for music but with little more knowledge than a production assistant. CVs and credentials should be checked closely and the Rights Team are happy to make recommendations. Producers should think hard about whether they need a supervisor and the expense or whether they really should be investing in training up staff on all copyright areas like music. Music courses can be equally expensive and easily forgotten. The Rights Team offer free music training, supervision and time for producers to come to Channel 4 and discuss all music and copyright issues on a particular commission.

Jeremy Kimberlin 2008

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