ELECTRONIC MEDIA DISTRIBUTION DURING COVID-19 CRISIS

League Conference 2020

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Electronic Media Consultants
League of American Orchestras and Employers’ Electronic Media Association (EMA)
COVID-19 Electronic Media Agenda

• Introduction and Welcome
• Project Planning and Implementation
  – Strategic Overview
  – Production and Distribution
  – Rights Clearances Overview
  – Project Results Measurement
• Music Copyright Licensing
• Musicians/AFM Approvals
  – EMA Orchestras
  – Other Orchestras
• Q&A
Situation Analysis

• Historical Orchestral Mission:
  – **Primary**: Live music performances “in person” in concert halls
  – Capture/distribution of music via electronic media: secondary role for some (but not part of core mission)

• Today:
  – Live performances suspended
  – Digital distribution should be core strategy for bringing music to audiences for all orchestras:
    • During current COVID-19 shutdown of live performances
    • During “reopening” phases with social distancing restrictions
    • Long-term under new “normal” conditions to expand audience
Project Planning Steps

S.M.A.R.T. Goals
- Specific
- Measurable
- Ambitious
- Realistic
- Time-based

Content
- New/Archival Content

Production
- Master Tape Prep

Distribution
- How to Reach Target Markets

Rights Clearances
- Approvals
Production & Distribution Issues

- **New Material:**
  - Identify audio and video capture systems (e.g. Zoom)
  - Choose video and audio editing software
  - Engage technician to create master tape

- **Archival Material:**
  - Identify source material (original, if possible)
  - Audio and video quality
  - Format for digital distribution

- **Distribution:**
  - Partner platforms (e.g. local broadcaster, venues, producers)
    - Radio and Television
    - Streaming
  - EMA Employer controlled platforms:
    - Institution Website
    - Facebook
    - Instagram
    - YouTube
    - Vimeo
Rights Clearance Overview

• Obtain agreements with:
  – Musicians
  – Conductor
  – Soloists
  – Chorus (Professional or Amateur)
  – Opera:
    • Dancers, Stage Managers, Stage Directors, Supers, Children
    • Designers, Wardrobe, Make-up/Hair
  – Stagehands
  – Performance Venues
  – Composers/Publishers
    • “Small Rights” (ASCAP/BMI or Copyright Holder)
    • “Grand Rights” (Copyright Holder)

• Process:
  – Shared Goals + Collaborative Decisions =
  – Consensus Agreements
Project Results Measurement

• Keep records of:
  – Content released
  – Platforms distributed

• If possible, measure:
  – Numbers of people reached
  – Contact info (if possible) for people reached
  – Any resulting direct or indirect contributions received
## Music Copyright Digital Licensing

<table>
<thead>
<tr>
<th>Type of Copyright Work/Type of Use</th>
<th>Reproduction</th>
<th>Distribution</th>
<th>Public Performance</th>
<th>Digital Performance</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>Non-Dramatic Music Works:</td>
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<tr>
<td>Live Performance</td>
<td>Sale/Rental: Publisher Contract</td>
<td>N.A.</td>
<td>PRO Blanket License</td>
<td>N.A.</td>
<td>PROs: ASCAP, BMI, SESAC, GMR</td>
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<tr>
<td>Terrestrial (Analog) Radio</td>
<td>Publisher Contract*</td>
<td>N.A.</td>
<td>PRO Blanket License</td>
<td>N.A.</td>
<td>*Subject to negotiation, not a copyright</td>
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<td>Audio Recording:</td>
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<td>Physical (CD)</td>
<td>Publisher Contract*</td>
<td>Mechanical License; HFA</td>
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<td>Digital Download</td>
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<td>MLC: Mechanical License Collective</td>
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<td>Digital Interactive Stream</td>
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<td>Digital Non-Interactive Stream</td>
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<tr>
<td>PBS</td>
<td>Copyright Owner</td>
<td>Sync License; HFA/Statutory</td>
<td>PRO Blanket License</td>
<td>PRO Blanket License</td>
<td>Sync of audio with visual images</td>
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<td>Digital Stream</td>
<td>Copyright Owner</td>
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<td>PRO or Copyright Owner</td>
<td>PRO Blanket Lic: YouTube, Facebook TV, Film, etc.</td>
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<td>Film/TV &amp; Other Audio Sync</td>
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<td>Dramatic Music Works:</td>
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<td>Live Performance</td>
<td>Copyright Owner</td>
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<td>Copyright Owner</td>
<td>&quot;Grand Rights&quot; for use of music in opera, ballet, theater</td>
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- In 2020, works copyrighted 1925 or later require copyright license (Not needed in US for “public domain” works after 95 years; check foreign copyrights that may vary)
- For Non-Dramatic works (“Small Rights”):
  - ASCAP/BMI Digital License needed for audio content hosted on your website
  - Sync rights needed from publisher for audio synced to video EXCEPT
  - YouTube, Facebook, Instagram, etc. have ASCAP/BMI blanket licenses (embed web links)
  - Publisher rental contracts define whether add’l fees due for electronic distribution; subject to business negotiation, not required by copyright law
- Dramatic Works (“Grand Rights”) must always be licensed directly from publisher
Musicians/AFM Approvals

• Orchestra EMA Members:
  – Use terms of basic IMA
  – Use terms of COVID-19 IMA Side Letter/MOU
  – Negotiate special IMA Side Letter with musicians and AFM

• Non-EMA Orchestras:
  – CBA with AFM Local and “Individual” AFM-IMA
  – CBA with AFM Local, but no electronic media agreement
  – No CBA, but musicians hired through AFM Local
  – Non-union orchestra (no CBA)
EMA – AFM
Integrated Media Agreement

June 15, 2019 – June 30, 2022
## Basic IMA – Free Distribution

<table>
<thead>
<tr>
<th>News and Promotion</th>
<th>Limits</th>
<th>Approval</th>
<th>Reporting</th>
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</thead>
<tbody>
<tr>
<td>VIII B. Up to 10 minutes for news or &quot;magazine programs&quot;</td>
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<tr>
<td>VIII C. Promotional Excerpts:</td>
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<tr>
<td>VIII C.1. Up to 5 minutes by Employer</td>
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<tr>
<td>VIII C.1.a. Up to 5 minutes by Third Party (Direct Promotion)</td>
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<tr>
<td>VIII C.1.b. Up to 5 minutes by Third Party (Indirect Promotion)</td>
<td>-</td>
<td>OC</td>
<td>AFM</td>
</tr>
<tr>
<td>VIII C.2. Up to 15 minutes by Employer</td>
<td>6 per year</td>
<td>N.A</td>
<td>AFM</td>
</tr>
<tr>
<td>VIII C.3. National Anthem (except at &quot;Premium Game&quot; sports events)</td>
<td>-</td>
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</tr>
<tr>
<td>VIII C.5. Full Performance Streaming by Employer</td>
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</tr>
<tr>
<td>- Free Concert</td>
<td>1 per year</td>
<td>-</td>
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<tr>
<td>- Nominal Ticket Price</td>
<td>1 per year</td>
<td>OC</td>
<td>-</td>
</tr>
<tr>
<td>- Full Ticket Price</td>
<td>1 per year</td>
<td>Orchestra</td>
<td>-</td>
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<tr>
<td>VIII C.8. Commercial Announcements:</td>
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<tr>
<td>- By Employer</td>
<td>-</td>
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<tr>
<td>- By Co-Commission/Co-Production Partners</td>
<td>-</td>
<td>All OCs</td>
<td>-</td>
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<tr>
<td>VIII C.9. Up to 5 minutes by Individuals:</td>
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<td></td>
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<tr>
<td>- Outdoor performances</td>
<td>-</td>
<td>-</td>
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<tr>
<td>- Outdoor venue organizations</td>
<td>-</td>
<td>OC</td>
<td>-</td>
</tr>
<tr>
<td>- Indoor full orchestra performances</td>
<td>2 per year</td>
<td>OC</td>
<td>-</td>
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<tr>
<td>- Indoor informal events (400 seat max)</td>
<td>4 per year</td>
<td>OC</td>
<td>-</td>
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<tr>
<td>VIII C.10. 30 second television clip promoting institution</td>
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</table>
# Basic IMA – Free Distribution

<table>
<thead>
<tr>
<th>Volunteer Promotional Recordings</th>
<th>Limits</th>
<th>Approval Required</th>
<th>Reporting Required</th>
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</thead>
<tbody>
<tr>
<td>VIII.D. Up to 15 minutes by Individual Musicians/Small Ensembles</td>
<td>-</td>
<td>Musicians</td>
<td>AFM</td>
</tr>
<tr>
<td>VIII.D.5.a. More than 15 minutes by Individual Musicians/Ensembles (if musicians paid for time)</td>
<td>-</td>
<td>Musicians +</td>
<td>AFM</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gifts to Donors, Corporate Sponsors and Subscribers</th>
<th>Limits</th>
<th>Approval Required</th>
<th>Reporting Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>IX.1.a. Donor CD, DVD, Audio Download or A-V Download</td>
<td>1 per year</td>
<td>OC</td>
<td>-</td>
</tr>
<tr>
<td>IX.1.b. Donor Portal on the Orchestra Website (alternate to 1.a. above)</td>
<td>Seasonal access</td>
<td>OC</td>
<td>-</td>
</tr>
<tr>
<td>IX.2. CD or DVD Gift to Major Corporate Sponsors or Underwriters</td>
<td>1 per year</td>
<td>AFM</td>
<td>-</td>
</tr>
<tr>
<td>IX.3. Download or Portal Access for Subscribers/Multi-Ticket Buyers</td>
<td>2 per year</td>
<td>OC</td>
<td>-</td>
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</tbody>
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<table>
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<tr>
<th>Streaming of Local Radio Broadcasts</th>
<th>Limits</th>
<th>Approval Required</th>
<th>Reporting Required</th>
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</thead>
<tbody>
<tr>
<td>XI.D. Simultaneous streaming of local radio broadcasts</td>
<td>-</td>
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<tr>
<td>XI.D. On-demand streaming of local radio broadcasts for 30 days</td>
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<tr>
<th>Audio-Visual Educational Releases</th>
<th>Limits</th>
<th>Approval Required</th>
<th>Reporting Required</th>
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<tbody>
<tr>
<td>XVI.C.d. 45 minute educational programs (Pre-K to 12 classroom uses)</td>
<td>2 per IMA term</td>
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<thead>
<tr>
<th>Documentaries, Clip Programs, Compilations</th>
<th>Limits</th>
<th>Approval Required</th>
<th>Reporting Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>XVII.A. Up to 5 minutes for audio-visual clip, compilation or documentary programs</td>
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EMA COVID-19 IMA Side Letter

3/12/2020

- Additional content released without musician fees during crisis
- Both full orchestra & individual use require no compensation/benefit reduction for any musician for 30-days after each stream (Paragraph 5)
- Full orchestra content:
  - One release per week
  - New (physical or virtual) or archival content
  - Available for on-demand streaming for 45 days
  - Access to donors, ticket buyers via private link or password protected website and/or anyone who provides contact info (e.g. Vimeo)
  - Requires one-time approval of orchestra to use Side Letter
  - Orchestra Committee must approve content to be released
  - Any revenue generated need not be shared with musicians
EMA COVID-19 IMA Side Letter
3/18/2020 MOU Modifications

• Individual/small ensemble content:
  – 10 or fewer musicians physically together
  – No limit on # of musicians through remote performances (Zoom)
  – Volunteer Promotional Recording limit increased from 15 to 45 minutes
  – May include complete works
  – Musician participation must be voluntary
  – Three recordings of new content allowed per 7 days
  – Available for on-demand streaming for 45 days
  – Employer’s website or social media outlets (e.g. Facebook Page, YouTube)
Special COVID-19 IMA Side Letter

- If 30-day compensation guarantee not possible, AFM will consider negotiating a separate institution Side Letter
- Steps to follow:
  - Negotiate maximum salary continuation with AFM Local and musicians
  - Prepare list of desired new/archived content to release during crisis
  - Review list of content with Orchestra Committee/AFM Local
  - Ask OC/AFM Local to contact AFM for approval of media distribution and compensation plan (which they will evaluate relative to resources)
  - If approved, AFM will prepare written Side Letter for employer approval
  - Orchestra must also ratify
- If problems arise:
  - Make salary continuation contingent on getting media flexibility
  - Contact EMA consultants for help resolving AFM resistance
Q&A

• For advice or additional questions, please contact League and EMA consultants:
  – Michael Bronson: mconbrio@mindspring.com
  – Joe Kluger: jkluger@artsEmedia.com