

Shifting from Stage to Screen
A Webinar for the League of American Orchestras
Wednesday, November 18, 2020 @ 3 PM ET

Presentation Outline

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1. Assumptions and Disclaimers

- a. Musical compositions are subject to copyright protection under US Copyright laws.
 - i. Exception: Due diligence with music librarian as to whether the subject musical work is within the public domain.
- b. Not an exhaustive treatise on music licensing or copyright law.
 - i. On May 21 of this year, Jim Kendrick gave an [excellent presentation](#) about music streaming to the Major Orchestra Librarians' Association.
 - ii. On July 23, the Alliance of Performing Arts Conferences also hosted a very good panel titled, "[Licensing and Permissions Requirements for Livestream and Rebroadcast – A Deeper Dive](#)," which you can access through APAP.
- c. My remarks are focused on general considerations for clearing rights necessary to distribute content online, and in particular rights in musical works.
 - i. If you have specific questions about your particular plans, I encourage you to speak with a lawyer who has experience in music copyrights.
- d. I do not plan on addressing any issues related to the IMA or electronic media terms under any local collective bargaining agreement.
- e. Assuming the primary uses here are non-dramatic; be mindful that the licensing analysis may differ for a dramatic use (as covered in detail in Jim's presentation).
- f. Offer some background and context regarding the rights clearance process, and the specific question of synchronization rights.

2. Big Picture: Production Development Model

- a. *Development* (Vision; goals; program/story idea; rights acquisition and clearances; funding model)
- b. *Pre-Production* (Refine program; attach talent, producer, and director; coordinate technical logistics; finalize production budget)
- c. *Production* (Production shooting; rough cut)
- d. *Post-Production* (Editing audio and video; final cut)
- e. *Distribution* (Release to physical/digital; payments to rights holders)

3. Developing Digital Performances: Rights Clearance Checklist

- a. Musical Works
 - i. Rental Rights
 - ii. Synchronization Rights
 - iii. Performing Rights
- b. Other Third-Party Rights
 - i. Performers / Other Members of the Creative Team
 1. Rights of Publicity (Name and likeness)
 - ii. Musicians / Stagehands
 1. Subject to collective bargaining agreements
 - iii. Other Third-Party Source Materials
 1. Sound recordings
 2. Film clips
 3. Visual images

4. Traditional Model: Live Performances (Pre-Pandemic)

- a. Composer / Music Publisher
 - i. Rental rights
 - 1. Local non-commercial radio broadcast rights
 - ii. Live performance rights (“small rights”)
 - 1. ASCAP / BMI concert licenses
- b. Commissions
 - i. Composer creates and delivers parts, retains the copyright
 - ii. World premiere rights
 - iii. First recording rights

5. Synchronization Rights

- a. History Silent Films / Talkies – 1927 *The Jazz Singer*
- b. “Synchronization” license (i.e., an audiovisual reproduction license)
 - i. Recording the music in timed-relation to an audiovisual work
- c. Derived from the copyright holder’s exclusive rights of reproduction, distribution, and derivative use
- d. Generally, not statutorily compulsory (with the exception of broadcasts on PBS stations); entirely discretionary on the part of the rights holder:
 - i. Permission to make and distribute music as part of an audiovisual work for a particular project / purpose and method of distribution.
- e. Distinguishable from a “mechanical” license (i.e., an audio-only reproduction)

6. Synchronization Rights: Musical Compositions Rights Holders

- a. Music Publishers
 - i. [ASCAP](#) and [BMI](#) Repertoire Databases
- b. Composers / Songwriters
- c. Third-Party Agents
 - i. Licensing administrators
 - ii. Attorneys

7. Synchronization License: Terms

- a. Time (duration of license)
- b. Territory (geography)
- c. Use
 - i. What’s the program / scene?
 - ii. In-context instrumental use vs. out-of-context use
- d. Media format / distribution channel
 - i. TV (*PBS station exception may exist)
 - ii. Internet Streaming
 - iii. Social Media (FB; YT)
 - 1. Live stream vs. content will remain available after initial live stream
 - 2. User Generated Content vs. Commercial content / Paid Media
 - iv. Other (Podcasts)

8. Performing Rights: Due Diligence

- a. Platform-specific considerations (Vimeo; Brightcove etc.)
- b. Acquiring Performing Rights
 - i. Composer (directly)
 - ii. Publisher (through the Synch License)
 - iii. Through applicable PRO licenses
 - 1. ASCAP
 - 2. BMI
 - 3. SESAC