

The New and Complex World of Television Music Licensing

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American Idol

Dancing With The Stars

NCIS

True Blood

The Simpsons

CSI: Miami

The Voice

Grey's Anatomy

The Phone Call from the TV Producer

MUSIC SUPERVISOR: Hi, this is the music supervisor from (Name of Television Series). We'd like to use the song (Name of Composition) in a scene for an episode in which two of the primary characters find themselves in a dance club.

MUSIC PUBLISHER: How would you like to use the song and what rights do you need?

MUSIC SUPERVISOR: The use will be a two-minute background vocal, (although it could be less or more depending on the cutting of the final scene). We will also be using (Name of Performer)'s record. There is a possibility that one of the characters may also sing a few lines either while the record is being played or a couple of scenes later so it is seen on camera. For your information, I'm getting a fee quote from (Name of Record Company) so we can use the master recording with the actual performance. There also may be an ad card at the end of the episode which mentions the song and artist.

For the use, we'll need a price quote to use your song in the episode for the following media:

1. A five-year free television license
2. An option for internet streaming
3. An option for a life-of-copyright free television license
4. An option for downloads
5. An option for all television rights for life of copyright
6. An option for all media rights excluding theatrical
7. An option for a home video buy-out including mobile phones
8. An option for theatrical use outside the United States
9. An option to use the song in promos for the series

Negotiating the Television License for a Song

When a producer wants to use an existing musical composition in a television program, weekly series, special, miniseries, or made-for-TV movie, permission must, with few exceptions, be secured from the music publisher who owns the song. The producer or music supervisor of the show will decide what song he

or she wants to use in the program and the scene in which it will appear, how the song will be used (e.g., theme to the show, background vocal or instrumental, sung by a character on camera, over the opening or ending credits, etc.), and the media needed (e.g., free television, pay television, subscription television, pay-per-view, satellite on-demand, closed circuit, internet, basic cable, etc).

The producer or its “music clearance” representative will then contact the owner of the composition, describe the context of the program and particular scene in which the song will be used; ask for a specified period of time to be able to use the song in the program, negotiate a fee, and then sign what is known in the television business as a “synchronization license.”

THE OLD WORLD

At one time, television synchronization licensing was a very simple process. In many cases, the initial request was a five year (or less) free television or similar pay television license with options for an extension in those areas if the program was successful in addition to home video distribution.

THE CHANGING LANDSCAPE

In a world of ever-expanding media options, distribution platforms, marketing plans, divergent audience viewing patterns, advertiser preferences, current and expectant markets, new technology distribution methods (known or which will be developed in the future), monetization of ancillary profits, etc., licensing music for television has taken on a new level of complexity and intricacy.

It’s an area of new concepts, new demands to respond quickly, new types of structures, new relationships, new ways of looking at and analyzing things, and new types of considerations. Because of its value with respect to not only present and future income but also exposure, television licensing (in its expanded definition) is an area that you have to know the current state of affairs and deal accordingly. If you don’t or are not able to, success and the monetary rewards that follow (as well as the other things that can happen as a result of the use in the program) will be hard to achieve.

THE NEW WORLD

Many network series (especially the successful ones that have been on the air for years) have fairly simple licensing schemes (e.g., “all media from the onset”, “all television with a home video buyout option”, “all television and home video combined license,”).

All Television Media With Home/ Personal Video Options

A number of producers will ask for an “all television” or “all forms of television” synchronization license, usually for the life of copyright of the composition

being used. Pursuant to the terms of such a license, the producer is able to distribute the program via any television medium without having to resecure permission from the music publisher. In most of those licenses the producer has the right to extend rights to home video via an option for an additional fee.

All Television and Home/ Personal Video

Some successful series use an all television and home video combined license without any option language which pays for all rights when the agreement is signed.

All Media Licenses Excluding Theatrical

Some studios are requesting “all media” licenses, excluding theatrical, for certain programming—a license that includes, television, home video, the Internet, mobile phone use, and any other media over which television shows can be distributed. Such licenses include all TV transmissions such as free, pay, cable, satellite, subscription, hotel/motel to any type of monitor or receiver; all digital or broadband transmissions including streaming and downloading rights; all audiovisual devices (linear formats) such as DVDs, cassettes and other digital media; all other non-theatrical uses (including common carriers); and “in context” trailers, ads or promotions.

A. Dramatic Series:

There are a number of dramatic series, however, which license via an option scheme containing between four and ten separate scenarios all with different fees. An example of this type of series follows.

Initial Term:

Media: Free TV and Basic Cable TV. In Context Promo in All Media
Term: Two (2) Years
Territory: U.S. & Canada

Options:

- Option 1:** All forms of TV (now known or hereafter devised);
Non-Theatrical/Common Carriers & In-Context Promos in
All Media; Worldwide; 5 Years.
- Option 2:** All forms of TV (now known or hereafter devised);
Non-Theatrical/Common Carriers & In-Context Promos in
All Media; U.S. & Canada; In Perpetuity.
- Option 3:** All forms of TV (now known or hereafter devised);
Non-Theatrical/Common Carriers & In-Context Promos in

All Media; Worldwide; In Perpetuity.

- Option 4:** All forms of Home Video and Personal Video/DVD/EST rights (now known or hereafter devised) regardless of the means of delivery (incl. in-context promos in All Media); Worldwide; In Perpetuity.
- Option 5:** All Media (now known or hereafter devised) via any distribution method or means of transmission for any viewing device excluding theatrical, all audio visual devices and products for personal use, internet (including without limitation whether by streaming, downloading or otherwise), future networking technologies and storage and retrieval devices for use of the composition embodied in the program substantially as a whole & In-Context Promos to All Media; Worldwide; In Perpetuity.
- Option 6:** Internet (whether in streaming, non-permanent downloadable or other formats) including in-context promos in All Media; Worldwide; 1 month (renewable).
- Option 7:** Internet (whether in streaming, non-permanent downloadable or other formats) including in-context promos in All Media; Worldwide; 1 year (renewable).
- Option 8:** Non-Theatrical/Common Carriers; Worldwide; 1 month (renewable),
- Option 9:** EST (Electronic Sell-thru) (incl. in-context promos in All Media); Worldwide; 1 year (renewable).

B. Music/Performance/Dance Based Series

On the non-drama side, series like, “American Idol,” “Dancing with the Stars,” “So You Think You Can Dance” and similar shows will have numerous options which cover a large number of different types of uses, timing of uses and distribution media.

For example, a show such as, “Dancing with the Stars,” may ask for the following terms and options:

Initial Term: Five (5) Years, Worldwide and Disney Cruise Lines in All Television Media, including but not limited to Free, Basic Cable/Satellite/HDTV, Pay, Subscription, broadcast-on-demand, including video-on-demand and Direct-by-satellite (DBS) and internet/mobile

streaming (including in-context promotion in All Media).

Options:

- 1) World, Extension of initial All Television/streaming term to Worldwide, Perpetuity;
- 2) World Perpetuity, Home Video Media synchronization and unlimited unit sales buyout;
- 3) World Perpetuity, All media, now known and hereafter devised excluding theatrical.

In addition to the above, each license will further divide the options and fees depending on the actual use of the composition. For example, the following separate use categories are included in the license, and all with different dollar fees.

Use:

- A) **Visual Dance** (1:45) + 0:10 recap or single full use;
- B) **Short Recap:** single recap up to 0:25 in future episodes;
- C) **Single/multiple recaps up to 1:30** in future episode;
- D) **Extended Recap:** single/multiple recaps up to full repeat in a future episode;
- E) **Last Dance**/Closing Credits.

As to “American Idol,” the initial license request may be as follows:

Use:

- 1) U.S., its territories and possessions/Canada
One (1) year commencing with each original airdate of episode.

Free, basic cable & satellite television and in-context advertising and promotion rights up to 0:30 (in all media).
- 2) Rest of World
Two (2) years commencing with each original airdate of episode.

Free, basic cable & satellite television and in-context advertising and promotion rights up to 0:30 (in all media).

Options:

- 1) Electronic Sell-Through (audio and/or audiovisual download

offered via official show website and all other associated branded websites, and iTunes, as well as all wireless and mobile platforms, but excluding downloads of realtones/ringbacks): World/5 Years

- A) Audiovisual: The greater of (a) 10% of the actual retail prices or (b) ___ cents per download.
 - B) Audio-only: The prevailing statutory mechanical rate in effect at the time of download.
- 2) Realtones/Ringbacks (audio download streaming realtone or ringback offered via all wireless and mobile platforms through AT&T): U.S., its territories & possessions/Commencing on signature below and continuing throughout season finale/Rights granted per composition including the right to reproduce and distribute by means of transmissions to subscribers of AT&T in the territory/Greater of (a) 10% of retail price; or (b) ___cents per download/purchase/In the event a compulsory license rate for realtones/ringbacks (i.e., ringtones) is established by federal law, such compulsory rate shall supersede the negotiated rate above as of the effective date of such compulsory rate.
- 3) Audiovisual Streaming: World/Terms and Fees Below:
- A) Internet Streaming served via official show website
 - 4 months - \$
 - 6 months - \$
 - 1 year - \$

OR

 - B) Internet streaming across all affiliated/associated websites
 - 6 months - \$
 - 1 year - \$
 - C) Streaming in all wireless mobile platforms
 - 4 months - \$
 - 6 months - \$
- 4) Out-of-Context Advertising & Promotion Option: U.S., its

territories and possessions/All Media up to 0:30/\$_____ or \$_____ /week/Option exercisable commencing on the date of your signature below but no later than 12 months after the airdate of the final episode of the production.

Another variation is:

License Terms:

1) **Term:** Perpetuity
Territory: Worldwide
Media: Basic cable and Satellite, including in context promo

2) Options

Option 1:

Media: Free television now, known or hereafter devised, including in context promotion advertising
Territory: Worldwide
Term: Perpetuity

Option 2:

Media: All forms of television
Territory: Worldwide
Term: Perpetuity

Option 3:

Media: All forms of home and personal video/DVD/EST rights regardless of the means of delivery
Territory: Worldwide
Term: Perpetuity

Option 4:

Media: All media now known of hereafter devised via any distribution method or means of transmission for any viewing device excluding theatrical
Territory: Worldwide
Term: Buyout/Perpetuity

C. Shorter Term Licenses

Certain programs which do not have a projected long audience shelf life since they focus primarily on contemporary events and issues (such as, "Access Hollywood," "Ellen DeGeneres Show," "Jimmy Kimmel Live," "The Tonight Show," etc.) will many times only request short-term licenses, limited-territory licenses, many times with options.

For example, one such show requests:

Term: 2 Yr. Worldwide, Free/Basic/ Satellite/Radio/ On-demand streaming	Option: 4 Yr. Worldwide, Free/Basic/ Satellite/TV/ Radio	Option 2: World, 2 Yrs, All TV	Option 3: 7 years, Video, 10,000 Units, Worldwide
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Another requests:

License Terms: (Includes in-context advertising and promotion):

- 1) United States, Canada 30 Days, Free TV only, plus World ex-U.S. and Canada/All TV Media, including but not limited to Free, Basic, Pay, Direct-by-satellite, Subscription and CATV.

And another requests:

License Terms: (Includes in-context advertising and promotional rights):

- 1) World 1 Year, All Television Media, including but not limited to Free, Basic, Cable/Satellite, Pay, Subscription (including video-on-demand), Direct-by-satellite (DBS), and internet streaming, including in-context promotion in licensed media.

Another variation of a shorter term license is:

Media:	Basic Cable/Satellite TV and wireless including in-context Promos
Territory:	Worldwide
Term:	1 Year
Option 1:	Internet (whether in streaming, non-permanent downloadable or other formats) including in-context promos; Worldwide; 1 month (renewable)
Option 2:	Internet (whether in streaming, non-permanent downloadable or other formats) including in-context promos; Worldwide; 1 year (renewable)
Option 3:	Free, Basic Cable and Satellite TV including in-context

promos; Worldwide; 2 years

Option 4: All forms of Television now known or hereafter devised
Common Carriers including in-context promos;
Worldwide; 2 years

30 Second Promotional Audio Streams

Certain programs will request a no-fee, 30-second audio of the recording and composition used in each episode of the series which would be accessible on the program's official website. The license is for streaming only with no download capabilities and is designed to help viewers identify the music on the program since such information is not available in the closing credits. The name of the artist and the song title will be listed and there may be links either to the artist's website or to another site where the viewer can purchase the track.

Hit Songs Used as Television Show Themes

<u>Show</u>	<u>Theme</u>
CSI: NY	"Baba O'Riley"
CSI	"Who Are You"
CSI: Miami	"Won't Get Fooled Again"

Rather than hire a composer to write a theme song for a new television series, many producers will use a well-known song as the show's opening and closing theme. This is also true for revival series where the new producers do not have the rights to the theme song used in the original series. When presented with such a request, a music publisher may take one of a number of different approaches to handle the licensing, the most prevalent being a per-show fee for each series episode. It is also very common for a life-of-copyright all television license or all media excluding theatrical license to be negotiated for use of the song in the series.

Each case, however, must be treated on its own merits, recognizing the stature of the song being requested (e.g., current hit, well-known standard, newer song, or prior hit in need of new exposure), the budget for the series, the policies of the production company producing the show, the performance monies that will be earned from ASCAP, BMI or SESAC, and the possibility of a television series soundtrack album or hit single coming from the program.

In addition to the initial synchronization fee negotiation, all of these agreements provide for an additional fee to be paid when each episode goes to home / personal video unless such rights are included in the initial fee. And many times there is a guarantee that a certain number of series episodes will use the song as the theme (and payment made), even if the series is

unsuccessful and the guaranteed number of episodes are not broadcast or even produced. Most agreements also provide that the song and, if the series is using an existing master recording, the master will be available for uses as the theme to the series for a number of seasons into the future via producer options with contractual fee increases provided for each new season for which an option is exercised. On-screen credit is also one of the issues negotiated.

There are also a number of series which use existing songs and masters that were not major hits as themes. The issues involved in the negotiations are the same as in the hit song scenario, with the exception that the initial fees may not be as high.

Additional Licenses for Previously Licensed Programs (Older Series)

Unlike current licensing procedures whereby the show's producer is covered for multiple distribution channels (many times via options), many past licenses were more limited in nature (in some cases, because the media had not been invented yet).

In these cases, the show's producer will contact the music publisher and enter into a new license which covers additional distribution platforms. One example might be a producer securing the options to convert an all television license into a worldwide all media license. There are many variations in this area depending, of course, on the terms of the initial music synchronization license and the needs (including licensing budget) of the producer.

Fees

Some of the factors affecting the amount of the negotiated synch fee are whether the show is originally being broadcast or distributed for network, local television, cable, internet or other media, the scope of the rights granted, the options being requested, how the composition is being used (background vocal or instrumental use, theme, visual vocal), the music budget, the stature of the song (standard, hit song, new release), duration of the use, the term, the territory, whether there is a soundtrack guarantee, whether there is a likelihood of digital download activity, whether there is an ad card promo at the end of the program, whether only in-context vs. out-of-context promo uses are part of the license, whether a change of lyrics is being requested, and whether there is a dramatization of the events or story line described in the song, among others.

It should also be mentioned that certain programs license on a "Most Favored Nations" basis (with all compositions receiving the same compensation for the particular defined type of use). In such cases, the producer will provide the actual fee structure for the series in the request (including fees for options which might be exercised in the future) and the only decision for the music

publisher is whether to say “yes” or “no” to the use.

CONCLUSION

As you can see, successful television licensing is not for the inexperienced. Familiarity with the meaning of all options (e.g., home video, Internet, foreign theatrical, mobile devices), knowledge of the range of fees possible in each situation (e.g., successful or new show, past hit song or new artist release, is the show a “take it or leave it” entity or are standard negotiating norms in place), an understanding of the original writer’s grant of rights to the music publisher (any licensing restrictions, approvals, etc.) and knowledge of the many other factors which could affect the anticipated backend royalties (e.g., status of ASCAP, BMI, and SESAC licenses in all relevant media, Copyright Royalty Board decisions, pending litigation, copyright legislation, foreign country online and traditional media licensing schemes), are all essential if one is to give the immediate and appropriate response that is necessary in today’s world of television licensing- licensing that goes well beyond the initial television broadcast.

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