

VRSC/ARAC
MUSIC CLEARANCE 101
DOCUMENTARIES

The VRSC/ARAC presented a music clearance panel in Toronto in the fall of 2018 featuring the manager of music placement for film and television at Universal Music, Ralph Singh, and music supervisor and VRSC/ARAC member Tammy Egan. Thank you to you both!

Introduction

Very simply, music clearance is copyright research and licensing of pieces of music from a list provided by a client for use in a variety of audio/visual projects.

There are two types of music rights that are mostly commonly cleared—synchronization rights and master rights. You may also come across the term mechanical rights. These are described below and are very rarely requested for documentary production. Briefly, they allow the licensor to create and distribute a copy of the song on its own or in a compilation for distribution as an audio recording.

There may also be third-party rights to clear under certain circumstances, but we won't be looking at mechanical or third-party clearances here. The VRSC/ARAC will hold another seminar in 2019 that will deal with master and mechanical rights, and very particularly third-party rights pertaining to music—how to identify and when to clear them. Here we'll just look at the basics.

Synchronization rights are composers' rights and are most often cleared through a publisher. These rights could be represented by an agent instead or a publishing company, or a composer could represent their own works. These are known as synchronization rights or "sync" rights because the song is being licensed for synchronization with a picture, whether performance footage of the song, stock footage, photos, or production footage and not for distribution on its own as an audio recording. A sync licence also allows the producer to record their own version of the song, for use in the film only.

One song could have a number of composers, each with their own publishing company or representative. When there are multiple publishers, the rights are divided up by percentage of territory each represents. Publisher A could represent the rights for 100% of the U.S. exclusively, with Publisher B, C, and D sharing world rights. Publisher B might hold 50% of world rights, and Publishers C and D 25% each. The piece of music will have to be cleared with all four publishers. Review the publishers' invoices and licences for percentage of representation to be sure what you were told is correctly reported in the paperwork.

Master rights are the rights of the person or company who owns the recording of a piece of music and cleared most often through a recording company, but, as you may find with some composers, small independent artists will sometimes own and clear the rights to their recordings themselves or through their agent. Master rights are not always necessary. If your producer has recorded their own version of the song to save money or because they have a certain arrangement or sound in mind, the production company owns the rights to that recording.

Mechanical rights grant the right to reproduce and distribute copyrighted musical compositions on CDs, records, tapes, ringtones, permanent digital downloads, interactive streams and other digital configurations supporting various business models, including locker-based music services and bundled music offerings. To record and distribute a song that someone else owns requires a mechanical license.

For a good overview of the music clearance process, we'll follow one piece of music from director's list to executed licence. We'll look at sync/publishing rights first. As with so many things, complications can arise, but the basic method is simple: Identify the material, find who can license the material, negotiate the fee and execute the agreement.

1. Get all the information from your client

Get a list of songs from the client and the client's rights requirements. Have the client provide the following information, which the publisher will want before contacting you:

1. Billing and licensing information
2. Your contact information
3. Project title
4. Type of project: Documentary/ feature film/advert, etc.
5. Synopsis
6. Music budget: The publisher will almost always take into consideration the money you have available to pay for the use of a song when determining the license fee.
7. Total film budget: Also, part of the negotiation process. The publisher can see if it is a low budget film, or if the producer didn't put enough money into the music licensing budget line.
8. Song title
9. Composer: If the client knows
10. Publisher's name: Sometimes the rights' organization citation will list, let's say, Jodi Marx Music as the publisher, but the contact information will direct you to another, larger publisher like SONY/ATV or Warner Music. It's good to include the original publisher's name for clarity. They can never have too much info.
11. Duration of song use
12. Number of uses
13. How the song is used: with interviews, featured as a performance, under credits. They will sometimes ask for script lines if there is narration, an interview or dialogue of any kind accompanying the song.
14. Rights required: If your budget is tight, the publisher will often propose taking a smaller package of rights and upgrading later.
15. Is the proposed fee on an MFN basis: The publisher will ask if the terms of the agreement will be on an MFN basis. MFN (Most Favored Nations clause) is a contract provision, in which, in the case of music licensing, a licensee agrees to give the licensor the best terms it makes available to any other licensor. In this case it means that the licensee will pay all licensors an equal amount for songs of equal duration and use.
16. Proposed fee: They will ask you to propose a fee based on the above information and what the client feels they can fairly afford. For world, all media excluding theatrical, in perpetuity expect the publisher to begin in the range of \$2,500US per side, meaning \$2,500US for sync rights and \$2,500US for master rights, if there is a master to be cleared. However, their proposed fee could be anything at all.
17. Are there masters to be cleared, or will the client be creating a new recording for specific use in the film.
18. Is the song accompanying opening or closing credits? This use can be a significantly higher cost.

2. Confirm the song titles

Research the song titles on the client's list to be sure they're correct.

As an example, let's say we have a song on our list entitled, "Open My Eyes". We know that the version to be cleared is performed by Country Joe and the Fish and written by Barry Melton. Barry Melton is a member of the band and was interviewed for the film, where he mentions writing the song. The song accompanies stock footage.

To confirm that we have the correct song title begin at one of the most likely places to find a song written by what we believe to be an American composer—the U.S. composers' rights organizations ASCAP (<http://ascap.com/>) and/or BMI (<https://www.bmi.com/>). CMRRA (<http://www.cmr.ca/>), the Canadian organization, also has a searchable website, but ASCAP and BMI seem to have a better search system. However, sometimes the CMRRA will have the information you need when the others don't. There are composers' rights organizations around the world, but you will probably find that you most often work with U.S. or Canadian composers. The process is the same no matter where the composers' organization is located. Many U.S. and other foreign publishers have Canadian offices or representatives.

Back to "Open My Eyes". Searching the ASCAP and BMI sites we find there are a lot of listings for "Open My Eyes" but none by Barry Melton. Now we google "Open My Eyes" by Country Joe and the Fish and come up with an audio file at YouTube of a song titled "Sing, Sing, Sing" by the same band. We hit play and the first lyrics we hear are "Open my eyes" but the song title appears to be "Sing, Sing, Sing" according to the YouTube info, and comes from a line in the chorus — "Sing, sing, sing".

We search "Sing, Sing, Sing" at ASCAP and there is no listing. We search at BMI and there it is with composer and publisher information. It is also listed at the CMRRA with your composer's name noted, and the publishing information, but the CMRRA also notes an alternate title — "Open My Eyes". The publisher listed is Joyful Wisdom Publishing and there is a contact name and email address. (See BMI and CMRRA citations for "Sing, Sing, Sing" attached here for reference.)

We now have what we need to approach the publisher: The title is "Sing, Sing, Sing" and the composer is Barry Melton. The publisher is Joyful Wisdom Publishing and the BMI citation has provided a contact email address.

Some commonly used composers' rights organizations:
i. CMRRA – Canada – www.cmr.ca
ii. BMI – United States – www.bmi.com
iii. ASCAP – United States – www.ascap.com
iv. PRS – United Kingdom – www.prsformusic.com
v. ACUM – Israel – https://acum.org.il/en/
vi. GEMA – Germany – https://www.gema.de/en/

3. Confirm that you have the composer of the arrangement being used.

In this case we know we have the right arrangement. There is only one arrangement listed at the rights organization Melton belongs to, and the director is using the audio of a version of the song performed by

him and his band on an American tv variety show. You've seen the sequence in the edit suite that includes the song.

4. Prepare necessary information before approaching the publisher

Clear the publishing rights first if you have both sync and master rights to clear. The owner of the copyright on the recording, the master rights, will not approve its use before knowing that the composer has approved.

After you've finished researching the songs on your list, create a document with the list below and fill in the information for each song on the list. Email each to their publisher. Follow up within a few days by email, and if you have a phone number, phone. Phone numbers can be hard to come by. Rarely do they answer their phones even if you get a number. Sometimes when you call, you'll be able to leave a message. They will rarely call you back, but if you persist you will eventually motivate them to look through their emails again to see if yours is there and respond by email.

1. Billing and licensing information
2. Contact information
3. Project title
4. Type of project
5. Synopsis
6. Music budget
7. Total Film budget
8. Song title
9. Composer
10. Publisher
11. Duration
12. Number of Uses
13. Description of Use
14. Rights Required
15. MFN – Y/N
16. Proposed fee
17. Masters to be cleared – Y/N
18. Opening/Closing Credits – Y/N

Music clearance can go very slowly. A publisher's rep can take weeks to respond to your initial request. Don't be put off if you haven't heard anything in the first two weeks, but do follow up within a few days of your initial request, and in a few days again. You may be able to establish that they received your request and will get back to you. That means the process has begun.

The rep might have more questions for you when you do finally hear back. Often the request has to be sent to the composer or the composer's estate for approval. Other times the publisher itself has the authority to approve or deny a request. Things move more quickly then.

Having the publisher send a request to the composer or the estate for approval can cause long delays in hearing back. Often composers are also working performers and can be on tour anywhere in the world, moving from place to place, in the air or on a slow boat through the North Sea with no internet service. This can add weeks to the wait time. Be professionally persistent and their reps will respond eventually. It is true, though, that the process to clear a list of songs can take months of on-again, off-again contact

and slow progress. Try to begin the music clearance process as early as possible, working with a list of possible songs for use rather than a final list. You do not want to start this process at the picture lock stage.

5. Negotiate Fees and Terms

There is no “book rate” for music licensing other than stock music libraries. A fee is established through the information provided on your request form and your powers of persuasion. You have already offered a certain fee on your request. As noted above, for world, all media excluding theatrical, in perpetuity expect the publishers to propose a bottom-level fee of no less than \$2,500US. Remember that because of the MFN (Most Favored Nations) clause, the recording company will be paid the same amount for the master fee, if master clearance is required.

A lot of factors can come into play when negotiating the fee—popularity of the song, the arrogance of a composer. You will discover them along the way. The only thing you can do about them is make a case for the fee your client is prepared to pay and then hope that it is approved.

Music fees are almost always paid in US\$, even to Canadian offices of American publishers. Most of the publishers you’ll deal with will be American.

6. Get the Invoice and Execute the Licence

Report your usage and inform them that the producer accepts their fee. Request the invoice. Payment will have to be made before the licence will be executed. Some publishers can take a long time to get out the invoice. Keep after them. The same can happen with signing the agreement. Keep after them.

It can happen that when you get the invoice and/or licence there is a different publisher’s name on the documents than expected. Check into it, of course, but this happens with smaller publishers particularly. In the case of “Sing, Sing, Sing”, Joyful Wisdom Publishing turns out to have been the company representing Barry Melton’s publishing company Seafood Music. The licence is in the name of Seafood Music. Just go with it once you know it’s correct.

7. Independent Suppliers

When your producer wants to use a song by a small, independent publisher or individual performer who holds the rights to a piece of music, first find out everything you can from your producer. Sometimes someone on the project will have a connection to the independent supplier, which is how they know of the piece in the first place. And sometimes they even have contact info, so always check. If this is not the case, then it is a matter of research and the rest of the process is the same.

8. Clear the Masters

If your producer is using a commercially produced recording, the master will need to be cleared. The master clearance process is the same, except it is a recording company most often who will hold the rights. If the client has the audio file, get what information you can from whoever brought it in or has their hands on it. The editor is often this person. Remember that the master copyright holder will want to know that the publishing rights (sync rights) have been approved before starting on their clearance process. They will also be paid a fee equal to the publishing fee.

Those are the basics of music clearance.

SING SING SING

TITLE

TITLE DETAIL
BMI Work # 1347551
ISWC # T-700063478-8
Total Controlled by BMI: 100.00%

ALTERNATE TITLES:
OPEN MY EYES

SONGWRITER/COMPOSER	CURRENT AFFILIATION	CAE/IPI
MELTON BARRY	BMI	61411908
PUBLISHERS	CURRENT AFFILIATION	CAE/IPI
JOYFUL WISDOM PUBLISHING	BMI	15614116

JOYFUL WISDOM PUBLISHING

CAE/IPI #: 15614116

Phone: (510) 486-2156

Fax: (510) 486-2015

Contact: BILL BELMONT
BOX 193316
SAN FRANCISCO, CA 94119
BEARASC@EARTHLINK.NET

[View Publisher's Catalog](#)



[sign in](#) (../Account/Login.aspx)
CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.

(/Home)

[sign in](#) (../Account/Login.aspx)

[CMRRA HOME \(HTTP://WWW.CMRRA.CA\)](http://www.cmrra.ca)

[REPERTOIRE SEARCH \(VIEWREPERTOIRELIST.ASPX\)](#)

[FAQ \(HTTP://WWW.CMRRA.CA/MUSIC-PUBLISHERS/CMRRA-DIRECT/FAQ/\)](http://www.cmrra.ca/music-publishers/cmrra-direct/faq/)

Repertoire Work

Click [here](http://www.cmrra.ca/music-users/licensee-login/understanding-work-information) (<http://www.cmrra.ca/music-users/licensee-login/understanding-work-information>) to see a detailed description of the fields below.

Note: The Representation information displayed is for [MECHANICAL](http://www.cmrra.ca/music-users/mechanical-licensing-agreement/) (<http://www.cmrra.ca/music-users/mechanical-licensing-agreement/>) licensing only.

Title: SING SING SING

CMRRA Number: 01650754

CMRRA Total Claim% : 100.00

Author / Composer Details

First Name	Surname
BARRY ALAN	MELTON

Publisher Details

Publisher Name	Represented
JOYFUL WISDOM PUBLISHING	Yes

Alternative Titles

Title
OPEN MY EYES

Performing Artist Details

Band Name/Surname	First Name
Country Joe & the Fish	
Country Joe The Fish	
Country Joe & The Fish	
COUNTRY JOE & THE FISH	

Additional Work Properties

Medley	Contains Sample	Mashup	Remix	Public Domain	PD Arrangement
No	No	No	No	No	No

[BACK TO WORK LIST](#)