

MUSIC LICENSING FOR U.S. PRODUCED TELEVISION PROGRAMMING/2019

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NEGOTIATING THE TELEVISION LICENSE FOR A PRE-EXISTING SONG:

When a producer wants to use an existing musical composition in a television program, weekly series, special, limited series or 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, video on-demand, direct to consumer streaming, closed circuit, internet, basic cable, etc.).

The producer or its “music clearance” representative will then contact the owner of the composition (which is usually a music publisher), 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.”

If you’re a songwriter or writer/artist, it is essential that you know the type of email that you will receive from a music supervisor or licensing clearance person from a television series or program that is considering using your song.

The request will include:

- Identity of Production Company
- Identity of Program
- Episode Number
- Synopsis of Series
- Identity of Composition
- Scene Description
- Use of the Composition in the scene or scenes (visual vocal, background vocal, instrumental, theme, etc.)
- Duration of the Use (30 seconds, full usage, 20 seconds plus 15 seconds in multiple uses, etc.)
- Territory (world or universe, U.S. and Canada, Internet, additional territories to be added on an option basis, etc.)
- Term (life of copyright, 2 years with options to extend for longer periods, etc.)
- Rights Requested (worldwide all media including downloads and streaming, U.S. and Canada television with options to extend into additional media, etc.)
- Fee (\$500, \$5,000, \$12,000, \$25,000, etc.).

It should be noted that virtually all shows have music budgets and, unless you have a song that they have to have, the fee must fit within that budget.

If the song is actually used in the program, cue sheet information will also be requested many times as part of the fee quote.

A 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, depending on the program or type of series, on a new simplicity for some shows and a new level of complexity and intricacy for others.

DRAMATIC SERIES:

Many network series (especially the successful ones) have fairly straight forward licensing schemes (e.g., “all media, excluding theatrical”, “all television with a home/personal video buyout option”, and “all television and home/personal video combined license,”).

(a) All Television Media With Home/Personal Video/Electronic Sell Through Options:

Some 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 re-secure permission from the music publisher. In most of those licenses the producer has the right to extend rights to home/personal video via an option for an additional fee.

(b) All Television and Home/Personal Video/Electronic Sell Through:

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

(c) All Media Licenses Excluding Theatrical:

Many studios (and this is becoming more the norm for dramatic series) are requesting “all media, excluding theatrical” licenses, for much of their dramatic programming—a license that includes, television, home/personal video, electronic sell through, 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, and other digital media; all other non-theatrical uses (including common carriers); and “in context” trailers, ads or promotions. If the producer wants to use the song in an out-of-context manner (e.g., over a number of scenes from the program in a promo vs. how the song was actually used in the show), an additional synch fee will be negotiated and paid.

(d) Additional Theatrical Option:

Since certain television programming is being shown in motion picture theaters (e.g., episodes from Game of Thrones), this will become an extra option in television licenses or may, in the future, be included in an all media license.

MUSIC PERFORMANCE/DANCE BASED SERIES:

On the non-drama side, series like "The Voice", "America's Got Talent", "Dancing with the Stars," "The Masked Singer", "So You Think You Can Dance", American Idol 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, one series in this genre requests for the following terms and options:

Initial Term: Five (5) Years, United States, Canada, Bermuda, Caribbean, Latin America, Asia 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. Extension of initial All TV/streaming term to worldwide,perpetuity;
2. World perpetuity, All media, now known and hereafter devised excluding Theatrical; and
3. Clip Streaming.

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: up to 2 minutes;
- B. Short Recap: single recap up to 25 seconds in future episodes;
- C. Single/multiple Recaps: up to full repeat in future episode;
- D. Bumpers and Rejoin (**various timings**): single/multiple recaps up to full repeat in a future episode;
- E. Last Dance/Closing Credits: up to 2 minutes;

- F. Extended Dance: over 2 minutes;
- G. The View, Good Morning America and LIVE with Kelly Performances.

An additional example follows:

Another series requests that the territory be the U.S. and Canada plus internet for the world, the term be for 2 years, and the media being all forms of television now known or hereafter devised (including without limitation on demand services), wireless,, mobile, internet streaming, non-permanent downloads, in context trailers and promos and the right to include clips and/or entire show plus the right to pan lyrics and lead sheets during rehearsal packages and to use lyrics as graphic elements during rehearsal packages and performances with options to review the rights for 2 years, renew for life of copyright, extend the territory to the world outside the U.S. and Canada and to extend the distribution channel to include electronic sell-through, among other things. Audio downloads are licensed and paid for at the statutory mechanical rate.

SONGS USED AS TELEVISION SHOW THEMES:

<u>Show</u>	<u>Theme</u>
NCIS: New Orleans	“Boom Boom”
CSI	“Who Are You”
CSI: Miami	“Won’t Get Fooled Again”
The Sopranos	“Woke Up This Morning”

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. 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 common for a life-of-copyright 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, 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, SESAC, or GMR, and the possibility of a television series soundtrack album or hit single coming from the program.

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. For example if a series has an initial twelve episode order, an agreement might guarantee payment for eight episodes regardless of whether or not eight episodes are produced and/or broadcast. Most agreements also provide that the song and, if applicable, the master recording of that song will be available for uses as the theme to the series for a number of seasons into the future via options with fee increases normally provided for each new season. Obviously, if a pre-existing master recording is being used (vs. a re-record of the song), the show’s producer will also have to secure a license from the record company that owns the master. On-screen credit is also one of the issues negotiated.

FUTURE BACK END MUSIC PUBLISHER/SONGWRITER ROYALTIES:

Though there are many possible additional ways that licensed songs earn income beyond the initial television synchronization fee, the primary source of all future income is generated via the Performance Right. This is the world of ASCAP (the American Society of Composers, Authors and Publishers), BMI (Broadcast Music Inc.), SESAC and GMR (Global Music Rights) in the U.S. and foreign performing rights organizations (PROs) throughout the world. Writers and music publishers join these organizations who in turn negotiate music licenses with the users of music, collect those license fees and then distribute them to writers and music publishers based on the individual performances of their works.

This particular right of copyright comes into play when a television series episode is broadcast on over the air free television, cable, pay per view, etc. as well as streaming services and motion picture theaters outside the U.S. Each airing of an episode, in most cases, generates a royalty for the writer and music publisher of the song.

To put this area into perspective, ASCAP, BMI, SESAC and GMR combined annual receipts total of approximately 2.7 billion dollars. In the U.S., approximately 700 million dollars of domestic license fees come from all forms of broadcast television, cable and satellite with a significant additional amount coming from television and film performances in foreign countries.

The actual payments received by writers and publishers for all types of television performances are set forth in each PRO's payment schedules/Weighting Rules with the basic categories of theme song, score and feature performance (visual vocal or visual instrumental) determining the specific dollar value of each performance. Other factors include the media, license fee of the station, duration of the use (i.e., the number of seconds), etc. In the foreign marketplace, duration of the use is many times the primary factor in determining value in addition to the license fee of the particular station or service.

SOME FINAL THOUGHTS:

Familiarity with how certain programs license music, the knowledge of the range of fees possible in each situation (e.g., successful or new show, a "most favored nations" program where all songs in a defined use category are paid the same, past hit song or new artist release, whether the show is a "take it or leave it" entity or has flexible 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, SESAC and GMR licenses in all relevant media, Copyright Royalty Board decisions, pending litigation, copyright legislation, foreign country online and traditional media licensing schemes, etc.), are all essential if one is to give the immediate and appropriate response that is necessary in today's world of television licensing where

decisions have to be made quickly- licensing that goes well beyond the initial television broadcast.

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