

# Music Licensing for Dummies

NAB Las Vegas, 2013

**Copyright Amy DeLouise All rights reserved.**

Not for publication or re-use without permission.

Licensed images have been removed from this version.

This presentation not intended as legal advice.



# Disclaimer

---

- I was an English Major
- “This presentation does not constitute legal advice. Consult an attorney for legal advice regarding your specific copyright and intellectual property questions.”



# Today's Agenda

---

- Copyright
- Fair Use
- Rights of Publicity
- Licensing
- Research Tools and Strategies





# Copyright

A clearer picture on sound ©.



# Music Copyright

---

- Music can be registered for copyright at:  
U.S. Copyright Office  
101 Independence Avenue SE  
Washington, DC 20559-6000  
<http://www.copyright.gov/>
- A musical work is considered copyrighted from the moment music and lyrics have been set down on paper, recorded, or stored on a computer. No registration is necessary to protect ownership.



# Music Copyright

---

- The copyright in the **composition** is distinct from the copyright in the **sound recording** (the “master”).
- A song is considered “published” if it is posted on YouTube, CDBaby, etc; i.e. it doesn't require a print publication any more



# Types of Licenses

---

- Synchronization Rights
- Master Recording Rights
- Performance Rights – live stage and recorded
- Mechanical and Digital Download Licenses
- Music Performance Footage
- Talent & Estate Releases
- And so much more!



# Locating Copyright Holders

---

- Copyright in the composition managed by music publishing companies
- Sound recording rights managed by record labels
- Sound and Performance Licenses managed by Performing Rights Organizations (PRO's):
  - American Society of Composers, Authors and Publishers (ASCAP)
  - Broadcast Music, Inc. (BMI)
  - SESAC





# Example: Happy Birthday

---

- Melody was composed by American sisters Patty and Mildred Hill in 1893.
- The Summy Company registered for copyright in 1935.
- In 1990, Warner Chappell (now a division of Warner Music) purchased the company owning the copyright for \$15 million
- ASCAP manages the licensing for public performance



# Example: Happy Birthday

---

- Unauthorized public performances of the song are illegal unless royalties are paid.
- In the EU this copyright will expire after December 31, 2016 (70 yrs after Patty Hill died in 1946); in the U.S. the song is currently set to pass into the public domain in 2030.



# Rights of Publicity

---

- The right of every person, celebrity and non-celebrity alike, to control and benefit from commercial use of their identity.
- Protects against the use of name, likeness, portrait, voice, style of performance and imitations.
- Especially important when dealing with archival materials or public domain materials where copyright may or may not exist.



# Rights of Publicity

---

- The issue of right of publicity arises in a commercial use of an image when it results in implied or perceived endorsement of products and services.
- The duration of post-mortem rights of publicity varies from state to state, and varies from 10 to 100 years.
- Tom Waits vs. Frito Lay Inc.
  - Hiring a “sound alike” can violate rights of publicity
  - Damages not based on fame of performer



# What About Fair Use?

---

- Press
- Parody
- Excerpt in an educational/classroom setting
- Excerpt in a book as reference in educational context
- See American University Center for Social Media
- <http://www.centerforsocialmedia.org/fair-use/best-practices/documentary>



# Performance Rights

---

- Last year, in *Range Road Music, Inc. v. East Coast Foods, Inc.*, the Ninth Circuit Court of Appeals found a California business violated copyright laws when it played music without a license.
- "When [they] sue, they don't lose," –Peter Strand, entertainment attorney.



# Takeaway

---

- Don't assume.
- Do your homework.
- You can locate copyright holder.
- Digital resources make tracking and licensing easier.





# Licensing

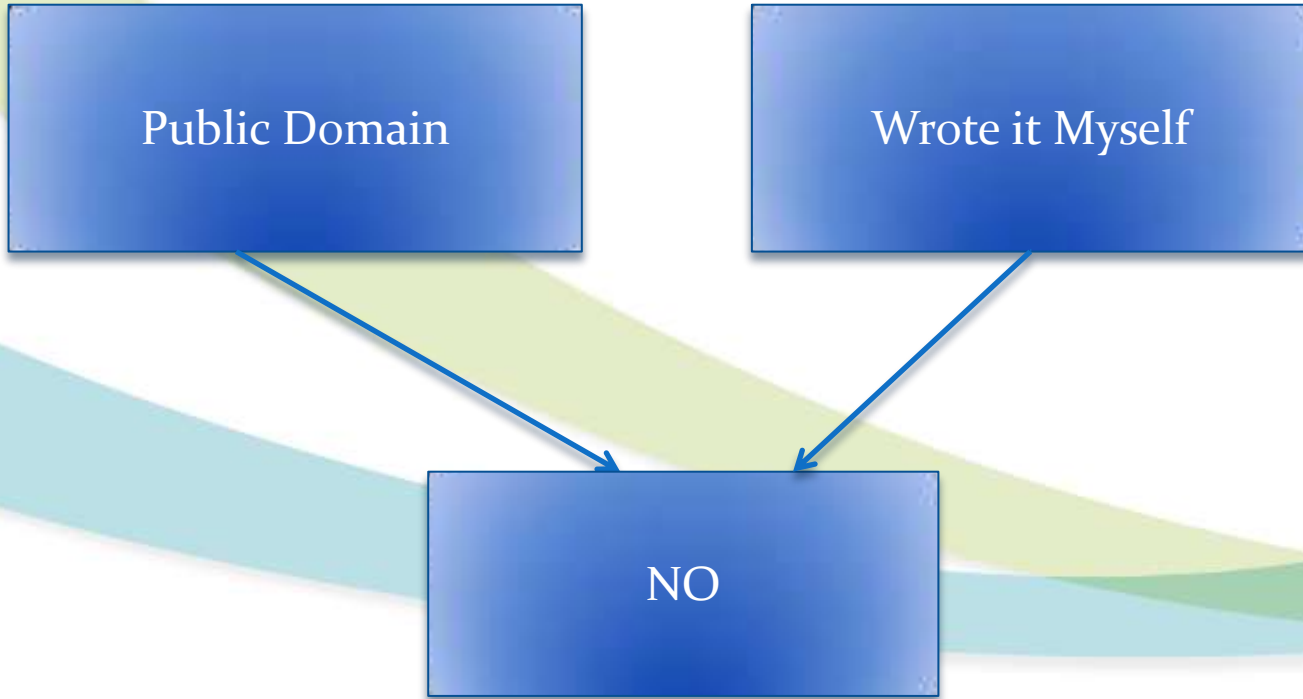
Getting the Music You Need



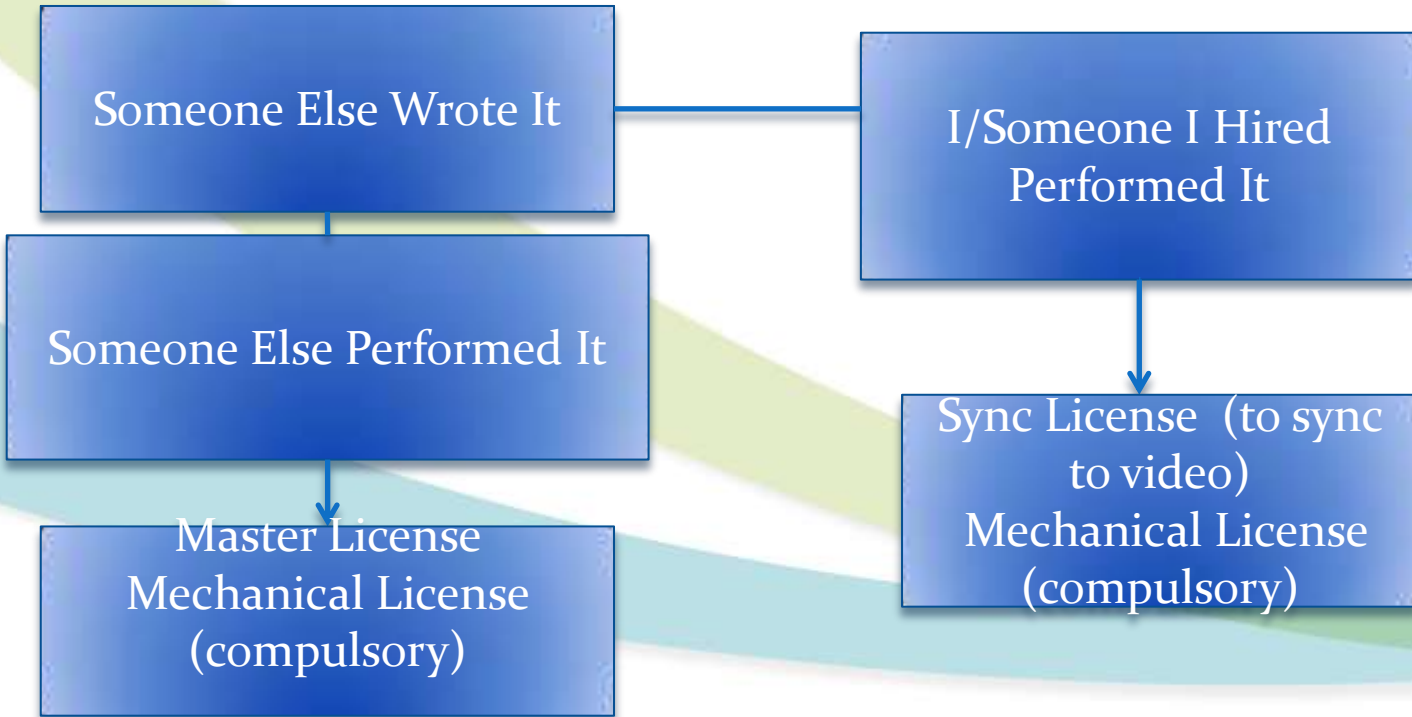


# Do I Need a License?

---



# Do I Need a License?



# Do I Need a License?

---

I hired someone to  
compose and perform it

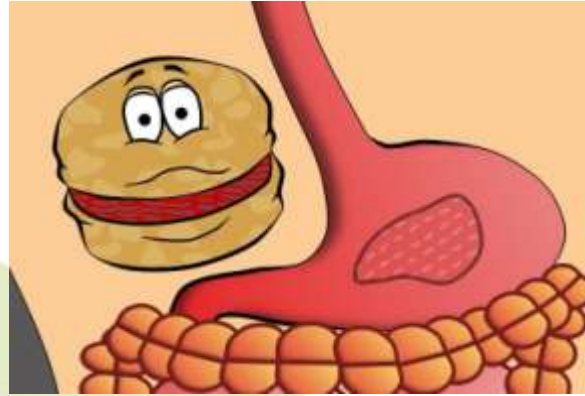
Use “Work for Hire”  
Agreement that covers the  
rights you want



# Example: The Eating Mash

---

- New lyrics for existing music
- Re-recorded new version of music
- Hired original artist to re-record song
- **Monster Mash Bobby Picket 1962**
- Agreement/fee for artist voice/recording
- Sync license with publisher



# Example: Safety Dance

---

- Sync license for use of song with video
- Approached Ivan Doroschuk/Men Without Hats
- Negotiated flat rates for sync license and master license with Universal Music Group



# Who Can Help?

---

- Clearing agents
  - An intellectual property attorney
  - <http://www.rightsworkshop.com>
  - <http://www.diamondtime.net>
  - <http://www.themusicbridge.com/>
  - <http://rightsflow.com/>
  - <http://www.songclearance.com/>
  - You!



# Who Can Help?

---

- Music sync agents
  - [www.jinglepunks.com/](http://www.jinglepunks.com/)
  - [www.rumblefish.com/](http://www.rumblefish.com/)
- Stock music libraries
  - [www.killertracks.com](http://www.killertracks.com)
  - <http://www.apmmusic.com/>
  - <http://www.premiumbeat.com/>



# Negotiating Tips

---

- Flat buyouts
- Flat annual license
- Non-profit use
- Reach out to Performers
- Do initial legwork to save on legal fees





# Final Thoughts

---

- Respect Copyright
- Just Ask
- Think outside the box on negotiating
- Consider downstream uses
- Don't forget Rights of Publicity
- Love a Composer Today!





# RESOURCES



# Music Resources

---

- [Common Music Licensing Terms](#)
- [Frequently Asked Questions About Licensing](#)
- [Music Licensing: Getting Your Music into Movies, TV, and Ads](#)
- [Compendia Music Licensing](#)
- [License Music Now FAQ](#)
- [Programmed music a business solution](#)
- [Jingle Use Of Songs](#)
- [Rock Covers FAQ](#)



# Music Resources

---

- <http://entertainment.howstuffworks.com/music-licensing6.htm><http://entertainment.howstuffworks.com/music-licensing6.htm>
- [Copyright office: Circular 56 -- Copyright Registration for Sound Recordings](#)



# Music Resources

---

- [Commercials](#)
- [General Licensing FAQ](#)
- [Licensing forms](#)
- [ASCAP & BMI -- Protectors of Artists or Shadowy Thieves?](#) An article by Harvey Reid
- [Obtaining permission to use Power Music for your video production](#)



# AMY DELOUISE

Thank You!

[amy@amydelouise.com](mailto:amy@amydelouise.com)

@brandbuzz

Blog: BrandBuzz at [www.amydelouise.com](http://www.amydelouise.com)

