

# BZ/Brief

## Music in Advertising Part III

### MUSIC RIGHTS: A CHECKLIST FOR AD AGENCIES

#### **IF YOU ARE USING A COPYRIGHTED SONG AND ARE PLANNING TO RECORD IT BY GOING INTO A STUDIO AND RECORDING IT WITH YOUR OWN MUSICIANS AND TALENT**

1. *SYNCHRONIZATION LICENSE*: Obtain from the music publisher.
2. *PERFORMANCE RIGHTS*: Usually the radio or TV station broadcasting a commercial is licensed by ASCAP and BMI and is responsible for paying performance fees to ASCAP and BMI. If a station does not have an ASCAP or BMI License, the advertising agency and its client may be responsible for Performance Rights fees. ESPN as of this writing does not have a Performance license.
3. *UNION FEES*: Session (and Re-use when it airs):
  - a. AF of M for musicians—TV and Radio.
  - b. TV Commercials: SAG (filmed TV commercials) or AFTRA (videotaped TV commercials) for singers (background & principal).
  - c. Radio Commercials: AFTRA for singers (background & principal)
4. *MUSIC PRODUCTION COMPANY*: If you hire a music production company to record for you, you need to enter into an agreement with them. One of the decisions that should be reflected in the agreement is whether the music production company or the agency is responsible for paying all the applicable union fees listed under #3 above. Another is whether the recording is being created as a Work-for-Hire or whether it is being licensed to you for specific uses only.

#### **IF YOU ARE USING A COPYRIGHTED SONG AND THE MASTER RECORDING OF THAT SONG**

1. *SYNCHRONIZATION LICENSE*: Obtain from the music publisher.
2. *PERFORMANCE RIGHTS*: Usually, the radio or TV station broadcasting a commercial is licensed by ASCAP and BMI and is responsible for paying Performance Fees to ASCAP and BMI. If a station does not have an ASCAP or BMI License, the advertising agency and its client may be responsible for Performance Rights fees. ESPN as of this writing does not have a Performance license.
3. *MASTER LICENSE*: Obtain from the record company. The record company's contract will almost always contain language that makes you responsible for all union talent payments. These involve the musicians, the backup singers and even the principal performer.
4. *UNION FEES*: New use (and Re-use when it airs):
  - a. AF of M—New Use Fee—TV and Radio.
  - b. *TV Commercials*: SAG (filmed TV commercials) or AFTRA (videotaped TV commercials). The agency needs permission from identifiable singers. This fee for identifiable singers is negotiable and has no set upper limit. The agency also needs to pay scale to unidentifiable singers on the recording.
  - c. *Radio Commercials*: AFTRA—AFTRA rules require consent and payment to identifiable and unidentifiable singers, similar to SAG's.

#### **IF YOU ARE PRODUCING AN ORIGINAL/JINGLE SCORE**

1. *COMPOSITION*—Are you licensing or purchasing?
  - a. Purchase—All rights.
  - b. Licensing—limited rights but they should include Performance and Synchronization Rights for any use involving your clients' product in perpetuity.
2. *PRODUCTION* (recording the composition):
  - a. Agency-Produced: Agency takes care of all union, talent and recording responsibilities.
  - b. Music Production Company: If you hire a music production company to record for you, you need to enter into an agreement with them. One of the decisions that should be reflected in the agreement is whether the music production company or the agency is responsible for paying all the applicable union fees. Another is whether the music is being created as a Work-for-Hire or whether it is being licensed to you for specific uses only.

#### **IF YOU ARE OBTAINING MUSIC FROM A MUSIC LIBRARY**

1. *SYNCHRONIZATION LICENSE*: Obtain from the music library.
2. *PERFORMANCE RIGHTS*: Yes, there are performance rights for music library music. Usually the radio or TV station broadcasting a commercial is licensed by ASCAP and BMI and is responsible for paying Performance Fees to ASCAP and BMI. If a station does not have an ASCAP or BMI License, the advertising agency and its client may be responsible for Performance Rights fees.
3. *AF of M (the Musicians' Union)*: Musicians' Union fees are not usually applicable to music library music because most library music is recorded outside of the AF of M's jurisdiction— in Europe.