



LEGAL ISSUES IN MUSIC COVERS

Legal Issues in Music Covers
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VOLUNTEER LAWYERS FOR THE ARTS

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Housekeeping

- This class is for educational purposes ONLY.
- No legal advice will be given today. If you have any specific legal questions or an active situation, please contact VLA directly. 😊
- NO recording of the class. The slides will be emailed to everyone in attendance.



Roadmap

I. Copyright

- Infringement
- Defenses to Infringement

II. Legal Rights in Music

- Exploiting Rights
- Music Covers
- Derivative Works

III. Licensing Cover Songs

IV. Hypothetical



Copyright

What is “**copyright**”?

- Copyright is the legal protection given to creators of **original** works, which are **fixed** in a **tangible medium** of expression
- Copyright provides creators with the **right** to:
 - Reproduce Their Work
 - Distribute Their Work
 - Make Derivative Works
 - Perform Their Work Publicly
 - Display Their Work Publicly
 - Transmit Their Work Digitally



Infringement Damages

Infringement carries with it **Statutory Damages**:

- **\$750 to \$30,000** per infringement
- Innocent infringer may owe as low as **\$200** per infringement
- Willful infringer may owe as high as **\$150,000** per infringement

There are also **other damages** that could occur from infringing a rightsholder's exclusive rights.



Defenses to Copyright Infringement

What are **defenses** to a copyright infringement claim?

- Work is not protected by copyright (public domain)
- Statute of Limitations (too much time has elapsed)
- Fair Use
- Independent Creation (wasn't copied from the original)
- Authorized use via a license (you got permission)



Legal Rights in Music

Why is music different than other forms of art?

- Music is made up of two components:
 - **The Musical Composition**
 - Songwriter's music and lyrics
 - Owned by songwriter and/or publisher
 - **The Sound Recording**
 - Audio recording of the composition
 - Owned by recording artist and/or record label



Exploiting Rights

Types of Exploitation for Songs:

- Movies, TV, or Advertisements
- Concerts
- Background Music in Eating Establishments or Bars
- Video Games, Apps, Streaming Services
- Music Covers



Music Covers

What are Music Covers?

- Music covers are re-recordings of songs by someone other than the original artist.
- Who are the original artists to these songs?
 - “I Will Always Love You”
 - “New York, New York”
 - “Girls Just Wanna Have Fun”
 - “Twist and Shout”
 - “Ring of Fire”



Derivative Works

What are **derivative works**?

- Derivative works are works **based on or derived from** one or more already existing works.
- The derivative work becomes a second, separate work **independent** in form from the first.
- To be copyrightable, a derivative work must **incorporate** some or all of a preexisting “work” and **add new original copyrightable authorship** to that work.

What is **Parody**?

- A parody is not a “cover” of a song, it is a recording of a different song with similar music in order to make fun of the original song. It is a protected form of speech.



Mini-Recap

- **Copyright**
 - Upon creation, authors obtain **exclusive rights** in their original works to reproduce, distribute, make derivative works, perform their works publicly, display their works, and to transmit their work digitally.
- **Infringement Damages**
 - Infringers can be found liable for up to **\$150,000** per infringement!
- **Defenses**
 - Public Domain
 - Statute of Limitations
 - Fair Use
 - Independent Creation
 - Authorized Use
- **Legal Rights in Music**
 - Songs are made up of two legally different parts: **the composition and the recording.**



Mini-Recap

- **Exploiting Rights**
 - Exploiting exclusive rights when you make music covers.
- **Music Covers**
 - Re-recording of an original song by a different artist.
- **Derivative Works**
 - Based on or derived from one or more already existing works.



Making Cover Songs

- To record a cover song and put it on SoundCloud you would need:
 - **Mechanical Licenses**
 - Any reproduction of the music or lyrics where a copy exists needs a mechanical license
 - The most likely place to obtain such a license is through the Harry Fox Agency (HFA).
- To perform the cover song in a bar you would need:
 - **Public Performance License**
 - Any time a song is performed in public
 - Have to obtain from a PRO
- To make a music video of the cover song and post it on YouTube you would need:
 - **Synchronization License**
 - Any use of a song (or a cover of a song) along with video is considered a synchronization of that song.
 - Need direct permission from the publisher



Mechanical licenses

- **Compulsory** – i.e. no permission necessary
- Statutory rates set by the U.S. Copyright Office
- Notice of Intent (NOI)
- Rightsholder can negotiate a lower rate if they want to



Mechanical Licenses

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Enter the song title and/or songwriter you are looking for.

Song Title:

Please note that data contained in HFA's song database has been provided to HFA by publishers, licensees, and other industry professionals. THE ACCURACY OR COMPLETENESS OF THIS DATA. In some cases, copyright ownership information shown may not be current. Songs listed in HFA's database may not be fully licensed through HFA, and may not be licensable through HFA.

Tips on searching Songfile:

Songfile utilizes a "fuzzy logic" search engine to locate songs in the database. You do not need to use wildcards (*, ?) or boolean terms ("and", "or", etc).

We suggest you search by song title first, then add songwriter name if necessary. Song search results are ranked in the order of song popularity to help you identify the right song.

Using the name of a writer who is part of a group or uses an alias may not yield positive search results. For example, if a song was registered with HFA as being written by Sean Combs, a writer search using any of his aliases such as Puff Daddy or P. Diddy will not return that song.

Note that the performer or artist that recorded the song may not be the songwriter. You may wish to research writer information at www.ascap.com, www.bmi.com, or www.sesac.com.



Mechanical Licenses

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Songfile® Search Results

Your search for Song Title: **Genie in a Bottle** returned **33** song(s), of which are displayed.

Song Title	HFA Song Code	Writer
GENIE IN A BOTTLE	I15969	DAVID FRANK, PAMELA EILEEN SHEYNE, STEPHEN KIPNER
GENIE IN A BOTTLE	GV7PCK	ROINE STOLT
GENIE IN A BOTTLE	GV7Y9J	ANGELO DEL CORE
GENIE IN A BOTTLE	GV7O1E	ETHAN WILLIAMS
GENIE IN A BOTTLE	G7159B	KEVIN WILLIAMS
GENIE IN A BOTTLE	G1592D	ANDREW JOHN PARTRIDGE
GENIE IN A BOTTLE	GVCKSG	CARMELA RAPPAZZO
GENIE IN A BOTTLE	GV09RD	VICTOR BRIAN HILDEBRANDT
GENIE IN A BOTTLE	GA4VU6	FABIO IORI, YOUP BOELEN
GENIE IN A BOTTLE	G6190B	CLYDE MILLER
GENIE IN A BOTTLE	G6979L	BYRON JACKSON
GENIE IN A BOTTLE	GA01B1	JORDAN ANDERSON WALKER
GENIE IN A BOTTLE V1	GA4NW4	BRENNAN FITZHUGH JOHNSTON, PHILLIP MICHAEL BRIGHT



Mechanical Licenses

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Song Information

Additional Information for:	GENIE IN A BOTTLE	
Writer(s):	DAVID FRANK, PAMELA EILEEN SHEYNE, STEPHEN KIPNER	
HFA Song Code:	I15969	

Publisher	Represented By HFA
EMI APRIL MUSIC INC	Y
PENNAME MUSIC OBO APPLETREESONGS LIMITED	Y
EMI APRIL MUSIC INC OBO GRIFF GRIFF MUSIC - EMI CATALO	Y

Artist	Album
100 HITS	KARAOKE GIRLS NIGHT
BOBBY LYLE	JOYFUL
CHRISTINA AGUILERA	2000 GRAMMY NOMINEES--POP
CHRISTINA AGUILERA	CHRISTINA AGUILERA
CHRISTINA AGUILERA	CHRISTINA AGUILERA (+CALENDAR)
CHRISTINA AGUILERA	GENIE IN A BOTTLE
CHRISTINA AGUILERA	GRAMMY NOMINEES 2000

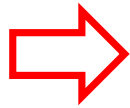


Public Performance Licenses

- Performance Rights Orgs (**PROs**)
- Not likely a concern if playing in a **venue**



Public Performance Licenses



BMI ABOUT CREATORS MUSIC USERS NEWS CAREERS ADVOCACY LOGIN Search Site or Repertoire

Contact Us: Music Creators

Are you a business using music? Please use [our licensing contact form](#).

Nashville
nashville@bmi.com
10 Music Square East
Nashville, TN 37203-4399
(615) 401-2000

New York
newyork@bmi.com
7 World Trade Center
250 Greenwich Street
New York, NY 10007-0030
(212) 220-3000

Los Angeles
losangeles@bmi.com
6700 Century Blvd
Los Angeles, CA 90045-1695
(310) 552-2000

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Synchronization Licenses

- **Non-compulsory** – i.e. need permission
- **Negotiated** directly with publisher/songwriter
- Needed when **video and audio** are together



Music Recap

- **Bifurcated rights** and **different rightsholders**
- Cover songs exploit the **composition** not the sound recording
- Need **compulsory mechanical license** (NOI and royalty rate)
- Performing in public requires a **public performance license** (not your problem)
- Videos (on YouTube or elsewhere) require a **negotiated synchronization license**



Pop Quiz!

You are a new artist on the scene trying to make a name for yourself. You have ideas for your own original material, but you really want to get your name out there with something recognizable and ready-to-record. You choose to cover “Killing Me Softly” because your biggest inspiration musically is Lauryn Hill.

- What do you need to do to record your own version of that song?
- What if you want to release that song on SoundCloud or Spotify?
- What if you want to release a music video on YouTube?
- What if you want to include the lyrics to the song?
- What if you change some of the words in the song—like the pronouns (she to he, etc.)?
- What if you record a version of it that is almost unrecognizable as “Killing Me Softly”?



THANK YOU!

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