

Licensing Plays Starring Role IN MOVIE MAKING

Transforming a great idea into a film is a work of synthesis as well as creation. Writers, artists, designers, CGI talent, musicians, actors, and directors provide the creative material. Producers make it all possible. And lawyers provide the mechanisms to define and divide the property rights among the talent, the production company, and the distributors, so they can successfully put their respective pieces together and commercially exploit the resulting work.

Licenses are the key mechanism. There are as many different kinds of licenses as there are creative forms. Consider just the use of music in a film (but don't forget that photographs, scripts, designs and other aspects of the work also involve property rights that need to be allocated and paid for). Different licenses are needed to commission a new score, to use a pre-existing song, to use a recording by a particular artist, or to do sampling.

A mechanical license grants permission from the copyright holder—typically the songwriter or publisher—to use copies of a recorded song on stated terms. A compulsory mechanical license does not require specific copyright holder permission, which has been granted generically to an agent.

If the filmmaker wants to use not just a song, but a recording by a particular artist, a master recording license will also be necessary. A synchronization license is needed to license music for a movie (or an advertisement, or video game) because it permits use of the composition in connection with, or in "timed relation with" a visual image. Sampling licenses are different in scope than entire works licenses, and often more flexible in their royalty provision. (They can be a good revenue source for the composer if the work that includes the sampling is successful.)



Creation of a derivative work probably will have to be specially negotiated with the copyright owner of the original work.

And the list goes on. In all cases, the details of how the work can and cannot be used, what royalties and other fees have to be paid, what credits must be given, and who controls the merchandising need to be well understood by everyone involved.

After all the necessary rights are obtained and the film is well on its way, the filmmaker must focus in earnest on distribution. The better the pre-release buzz, the better the filmmaker's negotiating leverage will be for distribution. Ultimately, a distribution license will address the geographic territory for distribution, the venues and media for distribution (theaters, home videos, network or cable TV, TV syndication, internet distribution, and as-yet undeveloped technologies), the duration of the distributors' rights, and the fee arrangement.

To succeed at all this, producers must have sufficient capital and vision. Oh yes—and a good lawyer.

Intellectual Property
Marta A. Manildi 734.668.7790



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