

## Getting in Tune—Licensing Music for Your Film

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Remember that scene in *Say Anything* where Lloyd Dobler serenades the lovely Diane Court by holding up a boom box outside her window? What makes that scene so perfect is the song coming out of the boom box—Peter Gabriel’s hit “In Your Eyes.” Getting permission to use that song in the film wasn’t so easy for director Cameron Crowe. It took speaking to the right people (and I suspect a lot of begging), for Peter Gabriel to agree to make the song available for use in the movie.

Crowe’s struggle is a great reminder that no matter who you are, getting music rights for your film isn’t easy. Licensing music is a small item compared to the budget of the film and is typically left to the last minute, which creates a massive panic and leaves little time to license the music before the film’s premiere.

What do you need to do to use an existing song in your film?

You must obtain three initial permissions: (1) the right to record and distribute copies of the song (Master Use License); (2) the right to record the music in synchronization with the moving pictures in your film (Synchronization License); and (3) the right to “publicly perform” the song as part of the public performance of your film (Performance License).

Next, determine from whom you have to get these rights. Here is where it gets tricky. There are two different aspects to a preexisting song: the underlying musical composition and lyrics, which is the written version of the song; and the master sound recording, which is the actual sound recording of the song as played and recorded by the artist.

While often times the record company or its subsidizing publishing company owns the rights to the underlying composition and the master recording, this isn’t always the case. You may have to go to two different parties to obtain the rights you need.

You will need a *synchronization license* from the owner of the composition (which should also include language relating to the public performance right) and a *master use license* from the copyright owner of the master sound recording. In certain instances, the *public performance right* must be licensed from a performance rights organization such as ASCAP, BMI or SEASAC.

Before you contact the appropriate parties, ask yourself a couple of questions to determine usage. This information will be useful later in your licensing negotiations:

- How will you use the song?
- What is your music budget?
- What length of time will the song be used in the film?
- Will there be more than one use of the song in the film?
- Will the song be used in the opening or end credits?
- What is the term of the license?
- What is the territory of the license?
- Will the song will be used on a soundtrack album or released as a single?

In addition to obtaining the appropriate licenses, you must also be aware of whether you have to pay for union reuse fees and if the recording contract limits the type of usage of a particular recording.

The prospect of trying to license music for your film undoubtedly can be daunting, but don't let this prevent you from taking the steps to create your own iconic boom box scene for us hopeless romantics out there.

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