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Business

Sample Licensing

The views and opinions expressed in this article are not meant to substitute for skilled legal advice which should be sought in each particular instance.

This article will discuss some of the basic "ins" and "outs" of sample licensing.

We will use Jurassic-5's album, *Quality Control* as an example for our purposes. On track #2, "The Influence" (the "New Song" and "New Recording" respectively) J5 use an excerpt from the song, "Some Minor Changes" (the "Old Song" and "Old Recording" respectively) which was written by Marty Paich and published by Hudmar Music (ASCAP) as it was performed by "The Hi Los" courtesy of Sony Music Entertainment.

When someone samples a portion of an Old Song/Old Recording and includes it as part of their New Song/New Recording they require the following two licenses to lawfully use the sample: 1. Master License; and, 2. Composition License.

I. Licenses Required

1. Master License

You require a master license because you have taken copyrighted material from the actual recording i.e., CD or vinyl that you are sampling from. In this case you would need to track down the actual master owner of the Old Recording and secure a Master Sample License for your intended use. In our J5 example, J5 secured a license to use the master of the Old Recording through Sony Music Entertainment who is the owner or authorized administrator of the Old Recording.

2. Composition License

You also require a composition license with respect to the Old Song itself which appears on the Old Recording which was sampled.

Marty Paich wrote the Old Song which was sampled but it is likely that his music publisher, Hudmar Music administers and negotiates the license that J5 would require to use Paich's song on the New Song. J5 would need to track down Hudmar Music and secure a written agreement from Hudmar Music in order to have 100% assurance to go forward with the New Song that incorporates portions of the Old Song.

II. License Terms

Every master and composition license varies, however there are basic terms and conditions that present themselves in every standard license.

a) Master

Fees

Typically the master owner of the Old Recording will require you to pay an up front fee (or advance) with respect to your proposed use. These fees will typically vary between \$1,000 to \$10,000 depending on a variety of factors, including: i) how prominently the sample is used in the New Song; and, ii) the profile of the artist that is being sampled (James Brown will likely charge more than a lesser known artist).

Some master owners will consider a complete one-time buyout for the use of a sample while others will require an advance/fee payment in addition to a royalty for each copy of the New Song which is sold. In a worst case scenario the owner of the Old Recording may absolutely refuse to allow you to use the Old Recording at all.

Royalties

The initial fee/advance payable is typically expressed as an advance payment of royalties. The royalty will typically range between \$.03 cents to \$.08 cents for every copy of the New Recording sold. When the initial fee/advance is recouped, further advances or at least further royalty rates, are paid to the Old Recording owner.

Miscellaneous

Other items must also be considered such as AFM payments and the issue of licensing the master for new uses such as for use in film or TV. Often the master sample license only includes the right to reproduce the New Recording on typical configurations such as CD, cassette or vinyl.

b) Composition Fees/Royalties

Typically the license with respect to the composition is a hybrid of an up front fee and a percentage of the New Song. Again, these fees and royalties will range in accordance with the factors listed above. Publishers who negotiate these fees will request anywhere in the range of \$1,000 to \$5000 as an advance fee along with a percentage of the New Song. The percentage can range from 0% to 100%. Once the agreement is completed the songwriter of the Old Song becomes an actual co-author on the New Song and the new division of copyright ownership is registered with the applicable performing rights society and other applicable organisations.

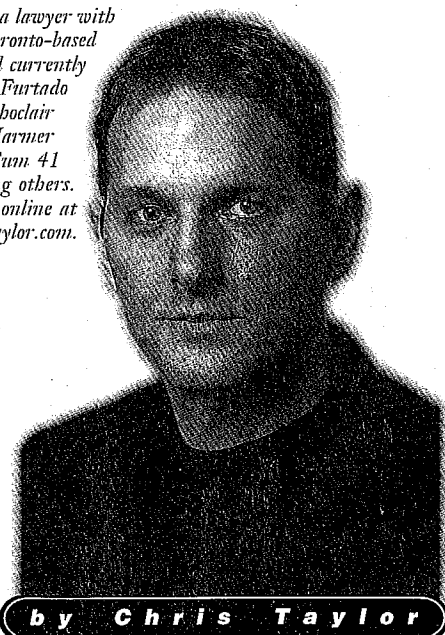
Miscellaneous

Note that your rights to do whatever you want with the New Song at this point will be restricted by the fact that there is now a new songwriter/publisher in the equation who have rights. In order to license the New Song for film and TV or for a computer game, all the copyright owners, including copyrights owners for the Old Song, need to give their approval.

Perhaps the most frustrating aspect of using and clearing samples is the bargaining power you, the original New Song owner, have. The larger master owners (i.e. major record companies) and the larger composition owners (i.e. major music publishers) deal with thousands of sample clearances every year. Industry standards have been established leaving little flexibility to secure better deals for unique circumstances. Often the only alternative is to remove the sample from the Old Song and Old Recording from the New Song entirely. If you are not prepared to meet with the Old Song or Old Recording owner's demands or perform the part yourself thereby removing the requirement to secure a master license.

The process to locate Old Song and Old Recording owners and secure these licenses can be simplified by enlisting the services of a reputable sample clearance company. Many of these companies are based in Los Angeles or New York. I have personally found them to be tremendously helpful and cost effective for clients wishing to clear licenses efficiently and cost effectively.

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by Chris Taylor