

# Cover Songs

## As Jenny Lewis Would Say By Way Of The Traveling Wilburys, "Handle With Care"

by Pat Leyland

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

### Introduction

We all have our favourite. For me, it's a toss-up between Annie Lennox's version of Bob Marley's "Waiting in Vain" and the Smashing Pumpkins' adaptation of "Landslide," as originally performed by Fleetwood Mac. Other tracks commonly cited include Johnny Cash's spin on Trent Reznor's "Hurt," and, more recently, Nelly Furtado's acoustic take on the currently ubiquitous Gnarls Barkley smash "Crazy." Of course, what we are talking about here are cover songs. For the purposes of this article, the term "cover song" refers to a new performance or recording of a composition written and/or previously recorded by another artist.

### Live Performance

A cover song can be a valuable tool in a live setting. If placed appropriately in the set list, a cover can elevate the overall performance and reinvigorate the audience members by infusing them with a dose of familiarity. However, an artist should consider the possibility that a first-time audience member may only recall a handful of songs from a set, and a recognizable cover song may effectively displace an original song from the listener's memory (for better or for worse).

In terms of the legalities of performing covers, Canada's *Copyright Act* grants the creator of a copyright protected musical composition the sole right to perform the work in public. As such, in order to perform a copyright protected song, an artist must first obtain permission from the creator of the song or the owner of the copyright in the song, if such copyright has been assigned by the creator. Fortunately for the musician seeking to perform a cover, this burden is effectively relieved via the Society of Composers, Authors and Music Publishers of Canada (SOCAN), the non-profit collective that administers performing rights in Canada.

In exchange for license fees, which vary according to the nature of the particular usage, SOCAN issues blanket performing right licenses that grant users

of music the right to publicly perform in public any song in SOCAN's vast repertoire. Due to reciprocal agreements with international performing rights organizations, a SOCAN license offers access to songs from all across the globe. It will very rarely be the case that the responsibility to obtain a SOCAN license lies with the performing artist. Generally, such responsibility falls on the owner of the venue and/or the promoter of the event in question. However, if you are planning on performing a cover, it may be wise to inquire with the venue and/or promoter in advance to ensure that the performance is covered by a SOCAN license. Please visit [www.socan.ca](http://www.socan.ca) for more information.

### Recordings

As in a live setting, an artist must be careful that the inclusion of a cover song on an album does not overshadow the original material. At the very least, an artist should produce covers in a manner that tilts listeners in the direction of the artist's original works. A good example here is Marilyn Manson's cover of the Eurythmics "Sweet Dreams." This cover, which gave Manson his first commercial hit, contains the dark and distorted goth-industrial elements that helped define the artist, as does his later (and excellent) cover of the song "Tainted Love." On the flip side, note the many bands that effectively became one-hit wonders after recording cover songs (e.g., Alien Ant Farm). A cover song can give your career a boost, but it can only carry you so far.

On the legal side, recording cover songs engages issues of law distinct from those related to the performance of cover songs, namely because an entirely different right is at play. While performing cover songs involves the right of public performance, recording cover songs implicates the right of reproduction. This right also originates from the *Copyright Act*. The owner of a copyright protected musical composition has the sole right to reproduce a composition in any material form. Therefore, if you want to manufacture an album that includes a cover song, you need to first obtain permission from the person(s) holding the copyright in the song in question. Such permission takes the form of a "mechanical" license, which is essentially a contract between the par-

ty making the reproductions and the party administering the copyright in the song.

Similar to the case with SOCAN and the performing right license, a non-profit agency provides administrative assistance to an artist who seeks to manufacture copies of an album that includes a cover song. The Canadian Musical Reproduction Rights Agency (CMRRA) issues mechanical licenses to music users on behalf of the copyright owners represented by the organization. The mechanical license differs from the performing right license in that the artist manufacturing copies of the cover song is responsible for paying a fee, currently set at 7.7 cents per song per copy sold or distributed if the song is five minutes or less. Each additional minute or part thereof adds 1.54 cents to the fee. Therefore, if you wish to manufacture 1,000 copies of an album containing a cover song that is five minutes or less, then the mechanical license for that particular pressing will cost \$77, provided the CMRRA represents the applicable copyright holder(s). If the CMRRA does not control the rights to the composition in question, then the artist seeking to manufacture copies of the cover song must obtain the mechanical license directly from the pertinent copyright holder(s). Any fee related thereto will be entirely subject to negotiation. Note that the reproduction of a song protected by copyright in the absence of a mechanical license constitutes copyright infringement. Please see [www.cmr.ca](http://www.cmr.ca) for more details.

### Conclusion

While the cover song can be a valuable weapon in the arsenal of a musician, it must be handled with care. Use it sparingly, use it strategically, and use it legally.

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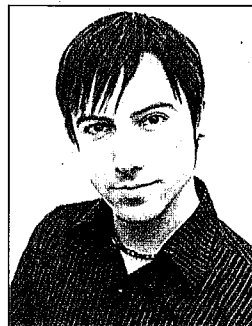


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