



# Music Licensing for Non-profits

Music Licensing & Copyright Webinar

## Disclaimer

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# I. Copyright 101

## II. Music Licensing Basics

### III. Venue Licensing

### IV. Fair Use





# Copyright 101

# Copyright 101

## Three Requirements for work to be protected:

- **Originality** - a new work
- **Fixation** - “tangible medium of expression”
- **Creativity** - minimal amount

## Categories of copyrightable works:

- **Literary works**
- **Musical Works**
- **Dramatic works**
- **Choreographic works**
- **Pictorial/Sculptural works**
- **Motion pictures and AV works**
- **Sound recordings**
- **Architectural works**

# Six Exclusive Rights of Copyright ownership

With certain exceptions, a copyright owner has the exclusive right to do, or authorize any of the following:

- Reproduce the work in copies or phonorecords
- Distribute copies or phonorecords
- Create Derivative works
- Publicly perform the work (in case of musical, literary, dramatic, choreographic, motion picture/AV)
- Display the work
- In the case of sound recordings, to perform by means of digital audio transmission

# Music copyright

- **Musical works**
  - **Generally a combination of melody, harmony, rhythm - includes music and lyrics; it is the sequences of the musical work itself (e.g. musical notes, phrases, etc)**
- **Sound recordings**
  - **Separate and distinct from the underlying musical work - we typically think of these as the recording or performance of the musical compositions (vs a recording or other sounds like nature or mechanical sounds, etc.)**

# Who owns the copyright?

## Musical works

- Generally owned by individual copyright owners and/or publishers who represent copyright owners.
- Typically, although not always, there is shared ownership for a musical work (e.g. Sony ATV owns 20%, WarnerChappell owns 50%, UMPG owns 15% and Kobalt owns 15%)
  - This means that each joint owner has the right to use the work or authorize others to use the work (regardless of consent of the other owners).
  - The only exception is an exclusive license since that would prevent the other co-owners from granting licenses.
  - There is a duty to account to co-owners for their share of any profits derived from use.

## Sound Recordings

- Generally owned by record labels. Major labels include: Universal Music Group, Sony Music Entertainment, and Warner Music Group.



# Music Licensing Basics

# Music Uses

- **Reproduction license**
  - allows licensee to reproduce a copyrighted musical work (together with distribution is typically called a “mechanical” license)
- **Performance license**
  - allows licensee to publicly perform a copyrighted musical work (can be performance of musical work and/or the sound recording itself)
- **Sync license**
  - allows licensee to reproduce/distribute a musical work in AV recording such as a movie, TV, video, etc
- **Print license**
  - reproduce/distribute musical works in printed form (e.g. sheet music, lyric presentation)
- **Distribution license**
  - licensee to distribute musical work or sound recordings

# Musical Works & Sound Recordings

- **Musical Works Mechanical License (e.g. reproduction/distribution)**
  - Used to be compulsory, now blanket structure (non-dramatic musical works only)
  - Controlled by the publishers, administered by the MLC
- **Musical Works Performance license**
  - Includes live, recorded and transmitted performances (e.g. radio etc)
  - Licensed by the Performing Rights Organisations (PROs) (ASCAP, BMI, SESAC and GMR)
- **Sound Recording**
  - License is needed for “digital transmission” of a sound recording (e.g. streaming), but is not needed for private listening and/or non-digital public listening
  - Licensed through private negotiation with the record labels
- **Synchronisation**
  - Licences required for both the sound recording and musical work to create AV content
  - Generally split 50/50 between labels and publishers

# Music Licensing Examples

- **Example #1:**

- **“Can’t Get No Satisfaction” by The Rolling Stones.**

- Written by Keith Richards and Mick Jagger. Performed by multiple artists including The Rolling Stones, Britney Spears, Aretha Franklin, etc.

- **Example #2:**

- **“Hold On, We’re Going Home” by Drake featuring Majid Jordan.**

- Written by Aubrey Graham (Drake), Paul Jefferies, Noah Shabib, Majid Al Maskati, Jordan Ullman.

- **Example #3:**

- **Production music / Library music**

- Can purchase “pre-cleared” music (e.g. a library catalog) for a variety of use in presentations, videos, marketing, etc.
    - Production music is usually not “top hits” or music you hear on the radio and is typically jingles, background music, etc.



# Fair Use

# Copyright Infringement

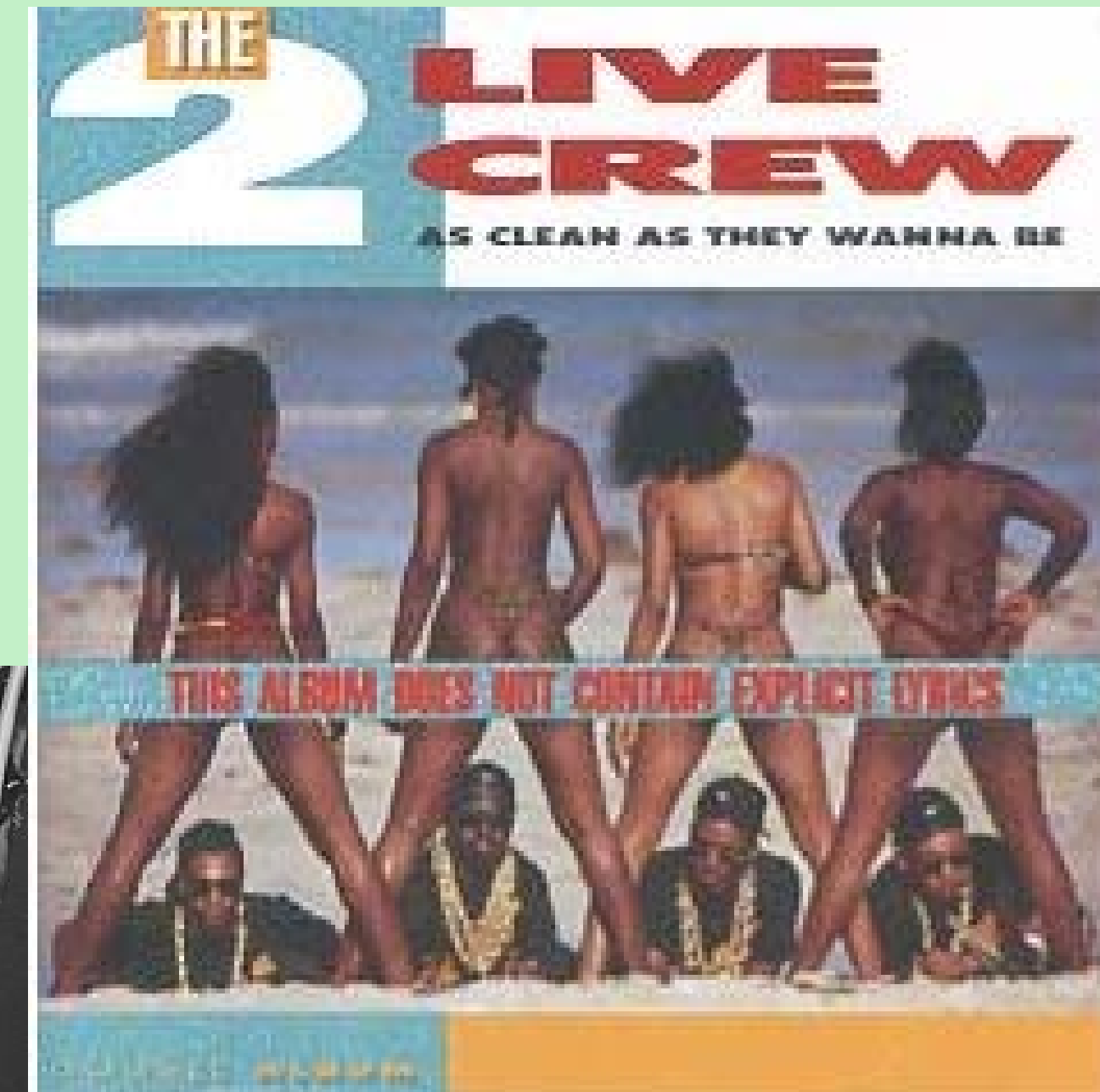
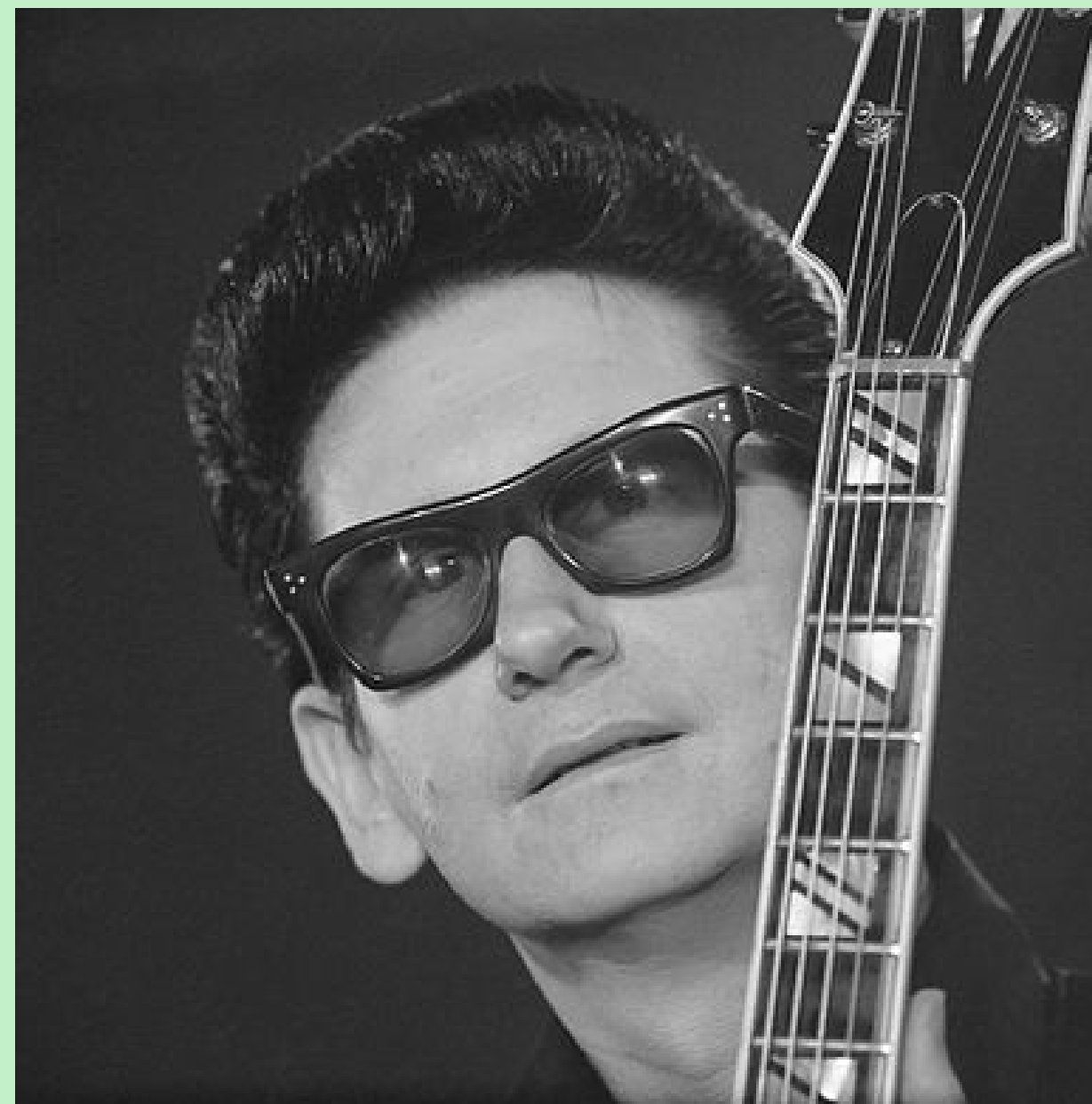
- **Unauthorized use of a work violating one or more of the exclusive copyrights (e.g. piracy)**
- **Remedies Available to Copyright Owner**
  - **Injunction**
  - **Impounding and disposition of infringing articles**
  - **Actual profits**
  - **Statutory damages (up to \$150,000 per work)**
  - **Costs and attorney's fees**
  - **Prison**
- ***How could I possibly defend myself?!?!?!?***
  - **Work not subject to copyright**
  - **Independent Creation**
  - **Fair Use**
  - ~~**Attribution**~~

# Fair Use

- **Common defense to copyright infringement, but always a fact specific analysis.**
- **Common law and later codified under 17 U.S. Code § 107, 108, 109, 110 and 112(f).**
- **Criticism, comment, news reporting, teaching, scholarship or research.**
- **Factors:**
  - 1. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes.**
  - 2. The nature of the copyrighted work.**
  - 3. The amount and substantial of the portion used in relation to the copyrighted work as a whole.**
  - 4. The effect of the use upon the potential market for or value of the copyrighted work.**

# Fair Use - Famous Cases

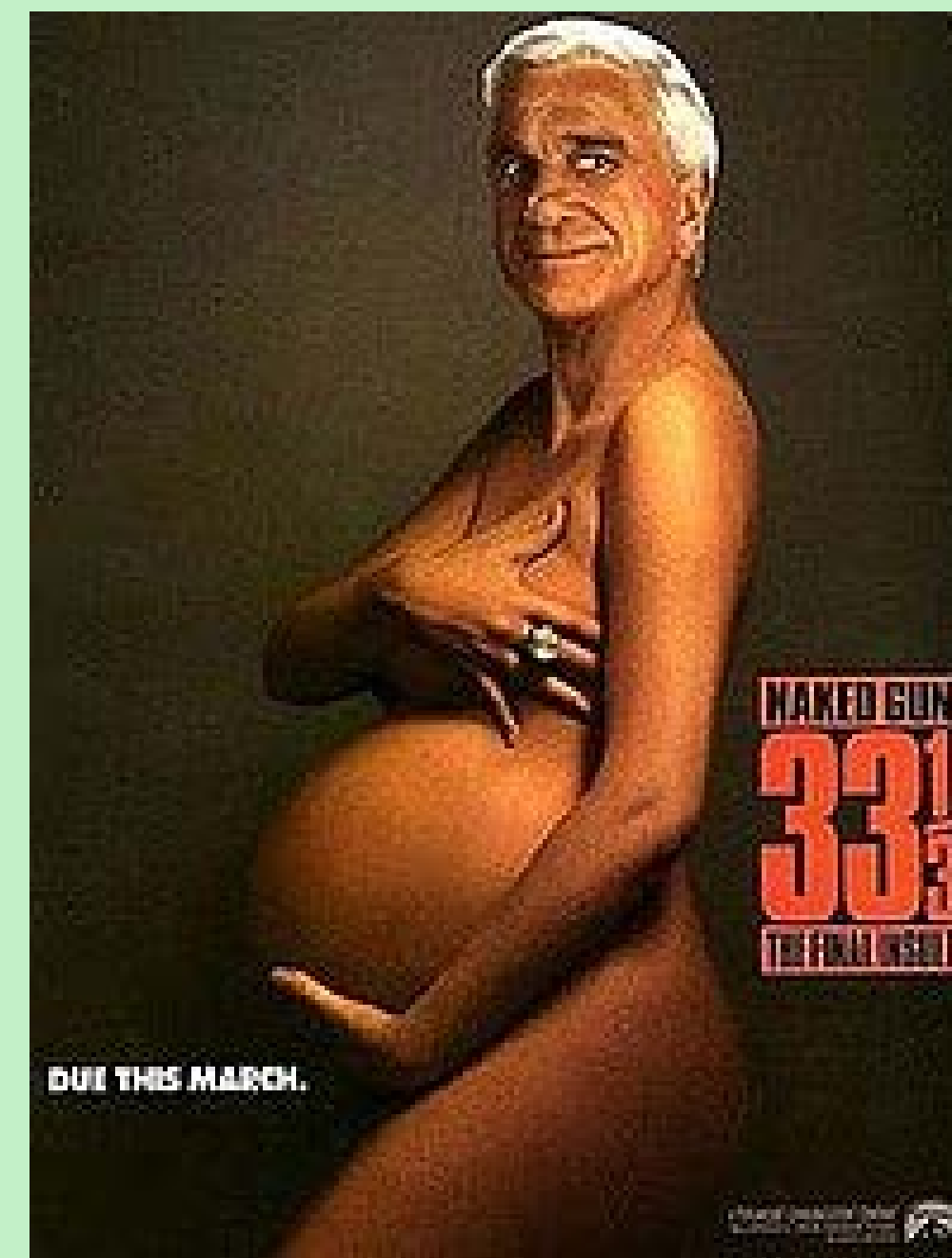
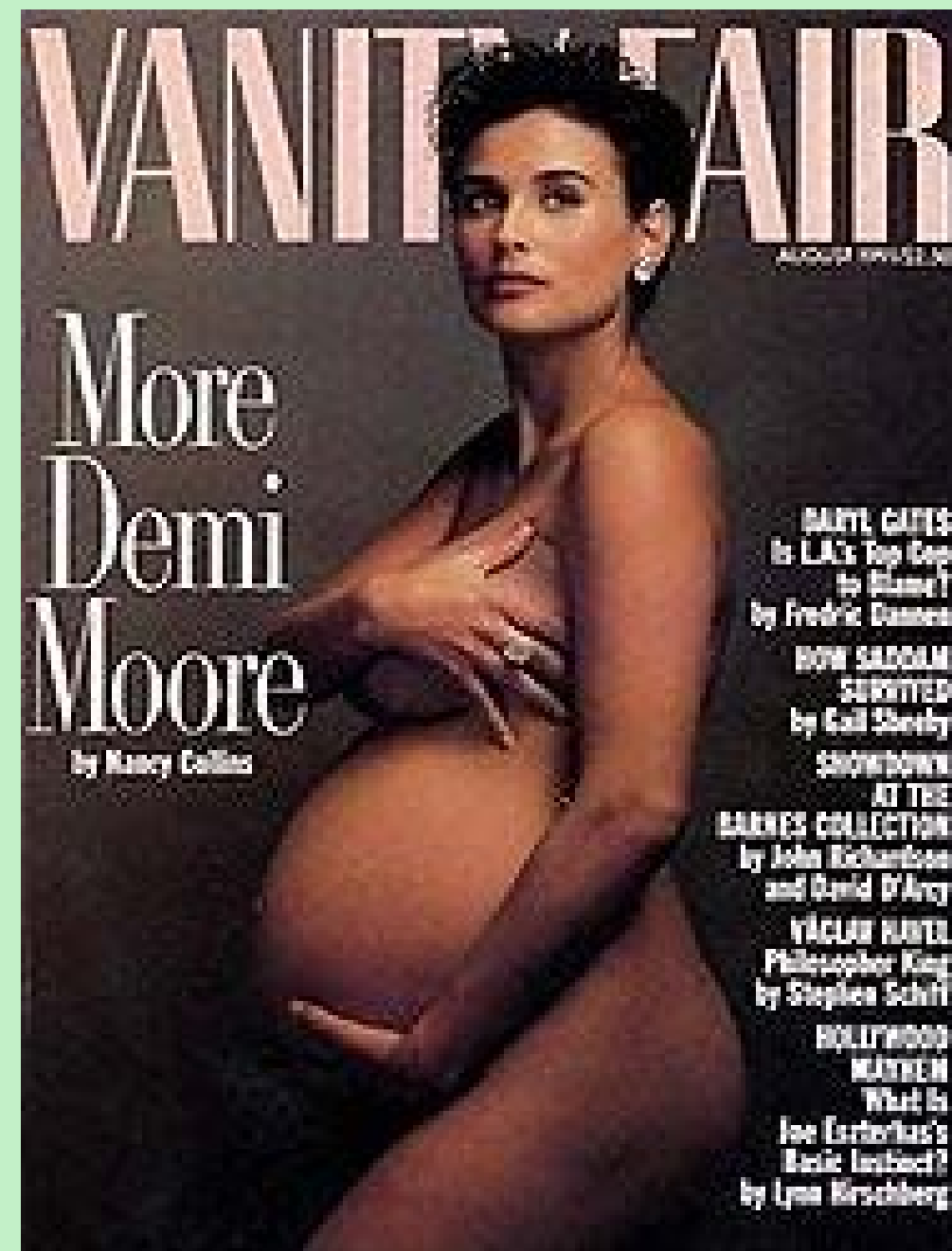
- *Campbell v. Acuff-Rose Music, Inc. (1994)*
  - The “Pretty Woman” case
  - Transformative / Parody
  - Sought but denied a license
  - Excessive but reasonable copying
  - No market harm
  - Parody is not a substitute for the original work





# Fair Use - Famous Cases

- *Leibovitz v. Paramount Pictures Corp. (1998)*
  - Parody
  - Commercial use of commercial art with substantial copying
  - Court found no effect of the use upon the potential market for or value of the copyrighted work.



# Fair Use - Famous Cases

- *Rogers v. Koons* (1992)
  - Not Parody
  - Mere copying without comment or criticism
  - Market harm found for derivative uses of original work
  - Remanded to lower court for damages determination, but settled out of court.



# Fair Use - Statutory Exemptions

- **17 U.S. Code § 108: Reproduction by libraries and archives**
- **17 U.S. Code § 110: Performance or display of works by non-profit educational institutions or religious organizations during teaching sessions and worship**
- **17 U.S. Code § 112(f): Reproduction of certain performances authorized under § 110; Analog to digital conversions by governmental bodies or nonprofit educational institutions**

# Venue Licensing



# Property Owner POV

## The Location Agreement

- Grant of License
  - Venue Owner (Licensor) grants Licensee permission to enter/use Property for the purpose of a musical performance, presentation and/or filming, photography of such including:
    - Access to the property, personnel, equipment, etc.
    - Right to use names, trademarks, logos, subject to Venue's approval.
- Clearance Obligations
  - Licensee shall be solely responsible for obtaining and paying for all necessary licenses, permits, consents and approvals required for Filming, including, but not limited to, obtaining consents from performing artists and music licensing rights.

# Property Owner POV

## The Location Agreement

- Results & Proceeds
  - Determine the owner of the photography, recording and/or filmed materials (i.e. the owner of the content), and Media requirements.
    - Licensee/Owner of the results & proceeds of the performance is responsible for securing all necessary licenses, permissions, clearances
- Representations/Warranties
  - Venue
    - Owner or authorized agent of the owner, and has full right to enter into location agreement and grant rights.
    - In Compliance with all local state and municipal laws
  - Licensee Reps/Warrants
    - Shall secure any and all permits, licenses or other consents which may be required for the performance.

# Property Owner POV

## The Location Agreement

- Indemnities
  - Licensee indemnitees
    - Claims arising out of or related to Licensee's production, distribution or exploitation of the Recordings;
    - Any breach of any of the Licensee's representations, covenants or obligations, and
    - Any violation of IP rights, libel, defamation, slander, invasion of privacy or right of publicity, any other violation of third party rights arising out of any Recordings.

# Non-profit Using Music

- All who participate in, or responsible for, performances of music are legally responsible.
- Ask who will profit from playing the music ?
- How can a non-profit know whether it will need to obtain a public performance license?
  - Essentially if anyone involved with a performance (performer or organizer) is paid, a public performance license must be obtained.
    - Holding a benefit concert v. music played at a fundraising event.
  - An event with licensing fees attached (mechanical and/or performance).
- Charitable use of music may be exempt under narrow exceptions.
  - I.e. performances as part of face-to-face teaching activity at non-profit educational institutions.



# Non-profit Using Music

## Alternatives:

- Websites for music in the public domain:
  - [MUSOPEN](#)
  - [Open Music Archive](#)
  - [Free Sound](#)
  - [FreePD](#)
- Royalty-free licenses may be granted to a non-profit, won't have to pay licensing fees to use copyrighted material.

