

Music Licensing & Copyright Infringement in the Age of Apps & Auto-Tune

Strategies for Avoiding New Risks in Licensing, Selecting, and Commissioning Music

A presentation by musicologist Judith Finell

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Scenario 1: Story + Music = iPad app

- A media production company wants to create an iPad app using original and pre-composed music, underscoring a well-known author's storyline.
- Familiar songs along with original music by a contemporary classical composer interweave with an original story by a prominent writer.
- The intent is to develop a story using music as its moving point. A book will be written, designed to become an iPad app. There will be interactive elements in the app, and an audio CD of the music will also be produced for distribution. A concert at Lincoln Center, NYC will launch the app, followed by launches in other major cities throughout the world.

Structure of the iPad app

- There will be 10 “scenes,” each containing a well-known popular song
- Each scene will be linked and emotionally enhanced by the inclusion of one of these songs, some in foreign languages requiring English translations, and all newly arranged for voice, chorus, cello, flute, and piano.

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Rights and Permissions

- What rights and permissions need to be obtained?
- Issues:
 - Arrangement vs. cover dichotomy
 - Public Domain challenge – determining whether a work is public domain worldwide
 - Where does the mechanical license stop short in today’s multimedia environment?
 - Grand rights

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Licensing and Reporting

- Licensing for an app
- Performing rights reporting
- Publishing lyrics and translations in liner notes for the CD and program notes for the concert

Scenario 2: Pre-existing lyrics + new music

- A group of musicians wants to license the lyrics of well-known songs by the Beatles, Bob Dylan, Paul Simon, and the Beach Boys, to compose new melodies for them and re-score them with new instrumentation.
- Issues:
 - What licenses are needed?
 - Strategies for obtaining the licenses from high profile song writers.
 - The project creators may consider this as a cover version, but it is more than that. Navigating the challenges.

Scenario 3: Failure to License = commissioning something similar

- How close is too close?
- How to create the same emotional impact and musical atmosphere as the original song, but avoid an accusation of stealing
- Know when to seek professional guidance

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Where do the problems begin?

temp track

n: the musical sound track that is used in a mock-up as a placeholder and that often illustrates the proposed musical direction for the scene.



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Scenario 4: Parody of a popular song

- A television comedy series wants to write a parody of a current popular song
- Where are the boundaries between cover versions, derivative works/arrangements, copyright infringement, and parody?
- Beware of visual references as well as musical ones

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GoldieBlox's "parody" of The Beastie Boys' song, *Girls*



Beastie Boys "Girls"



GoldieBlox Commercial

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Other Considerations

- When does licensing also involve copyright infringement risks?
 - Embedded samples – have they been cleared and acknowledged?
 - Disguised infringement
 - Embedded references to other copyrighted songs
 - Use of protected arrangements or recordings when underlying songs are public domain – what is the criteria for determining the distinction between them?
 - Music competition shows involving covers and arrangements
 - Re-recordings

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Questions?

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Judith Finell is a musicologist and the president of Judith Finell MusicServices Inc., a consulting firm in New York (Westchester County). For over 20 years, she has served as an expert witness and consultant in various disputes regarding intellectual property, including copyright litigation involving the Beastie Boys, Julio Iglesias, Sony/CBS, Igor Stravinsky, and many others. She has also testified involving music technology, including before the Copyright Royalty Board in Washington, D.C. in a dispute between the recording and music publishing industries involving the royalty rates for ring tones.

Judith Finell regularly advises film and television companies; advertising agencies; entertainment and copyright attorneys; media, publishing, and recording companies; and musicians. Her firm also provides music supervision services for film, television, and commercials. In this regard, Ms. Finell was engaged as a music consultant by Sony Pictures for *Memoirs of a Geisha*, and has consulted often with Disney, CBS, HBO, NBC, and others on the music selected for their productions. Ms. Finell also appeared as a guest on television's *Celebrity Justice*, discussing a pending copyright case involving Madonna. She also presents seminars and lectures to intellectual property and creative departments of various law firms and advertising agencies throughout the country, including frequent appearances in New York, Chicago, San Francisco, L.A., and Nashville.

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