"Essential reading for client-side Marketing and Procurement music buyers who want to know the right questions to ask."
Steve Lightfoot, Senior Manager – Global Marketing Procurement, World Federation of Advertisers

MUSIC RIGHTS WITHOUT FIGHTS

The Smart Marketer's Guide To Buying Music For Brand Campaigns

Richard Kirstein

"If you regularly develop video and are often looking for music, this book will help you better navigate this complex world."
Dominic Chambers - Global Head of Digital Marketing, Jaguar Land Rover

Everyone loves music, so marketers want great tracks for their campaigns. Buying music is complex and few marketers or agencies truly understand how to broker licences with the music business. **MUSIC RIGHTS WITHOUT FIGHTS** will empower brand marketers and their procurement colleagues to:

- Understand how music rights work
- Learn about key cost drivers and how to control them
- Identify risk and how to reduce it
- Improve their bargaining position
- Secure smarter deals and sustainable relationships

"Tips the scales for marketers with easy-to-follow steps to engage the music industry for mutual benefit."
Billy Burgess - Senior Global Communications Manager, Absolut - The Absolut Company – Pernod Ricard

"This book really simplifies how rights work and how to license them with better control of cost and risk."
Paul Hibbs - Head of Brand and Advertising, Nationwide Building Society

Richard Kirstein is the UK's leading independent expert on music rights buying for brands. During a music licensing career spanning over 20 years, he has brokered several thousand deals, acting for both music rights buyers and sellers. Since 2010, Richard has been Founding Partner of Resilient Music LLP, a successful specialist consultancy whose clients include some of the world's largest consumer brands in the fashion, automotive, financial services and alcoholic beverage sectors. Learn more at www.resilientmusic.com

UK £14.99 | USA $24.99 | €19.99
RETHINK PRESS
www.rethinkpress.com

ISBN 978-1-78133-167-5
90000
9 781781 331675

MUSIC RIGHTS WITHOUT FIGHTS

The Smart Marketer's Guide To
Buying Music For Brand Campaigns

Richard Kirstein

RETHINK PRESS

First published in Great Britain 2015

by Rethink Press (www.rethinkpress.com)

PRAISE

"This book shines a light on the dark art of music licensing and is essential reading for client-side Marketing and Procurement music buyers who want to know the right questions to ask."
Steve Lightfoot, Senior Manager – Global Marketing Procurement,
World Federation of Advertisers

"Music rights can be impenetrably complex for marketers. This book really simplifies how rights work and how to license them with better control of cost and risk."
Paul Hibbs – Head of Brand and Advertising, Nationwide Building Society

"Richard has been a pioneer in the development of new ways to procure music that gives brands more options and an ability to gain access to great music at reasonable cost. If you regularly develop video and are often looking for music, this book will help you better navigate this complex world."
Dominic Chambers – Global Head of Digital Marketing, Jaguar Land Rover

"The right music can be a blessing or a curse for brand builders. *Music Rights Without Fights* tips the scales for marketers with easy-to-follow steps to engage the music industry for mutual benefit."
Billy Burgess – Senior Global Communications Manager,
Absolut – The Absolut Company – Pernod Ricard

CONTENTS

To Jenni and Ivor, for the best start on the journey.

To Joe and Zac, in the hope they go further than I do.

FOREWORD

There is little doubt that the right choice of music can transform a piece of content or TV ad from being good to being truly memorable. Music can have incredible emotional power and can really build brand equity power and appeal. The music business has been through a traumatic period of declining revenues as recorded music revenues evaporate, and so the income from music syncs has become an ever greater part of their remaining profitability. It is therefore essential that you are well informed and have access to the right professional advice to obtain the right music at the right price, otherwise brands will continue to pay over the odds for music rights.

Richard has been a pioneer in the development of new ways to procure music that gives brands more options and an ability to gain access to great music at reasonable cost. If you regularly develop video and are often looking for music this book will help you better navigate this complex world.

Dominic Chambers
Global Head of Digital Marketing, Jaguar Land Rover

INTRODUCTION

All brands know that music is a powerful passion point; so great music in commercials and online videos can significantly increase consumer engagement which helps to drive sales. However, finding the right track is only the start; the real challenge occurs when brands try to license music and navigate the fragmented music rights industry.

I've written *Music Rights Without Fights* to empower brand marketers by explaining how the music rights industry really works. Using my insider knowledge, brand marketers can fully embrace this practical step-by-step guide to cost and risk management and license the music they want, with less pain.

During my career spanning more than twenty years in the music licensing business, I've developed a unique insight acting for both music rights owners and buyers. This perspective allows me to clearly articulate the cultural gap between the music industry on the one side and the brand world on the other. It's a relationship often fraught with misunderstanding and sometimes a lack of mutual respect. This can create a cycle of unilateral deal making in which brands feel less than satisfied.

It's been my mission to educate brands on music rights and how best to license them. I've worked with some of the world's largest consumer brands, particularly in the fashion, automotive, financial services and alcoholic beverage sectors; explaining the role of all the parties involved and the tactics to drive convergent agendas for better commercial

outcomes. I've gained a maverick reputation for (i) teaching brands the tips the music industry would rather they didn't know and (ii) for collaborating with marketing procurement specialists and trade bodies who champion the benefits of de-coupling TV production from creative agencies, which of course includes music.

Music Rights Without Fights explains the framework I've developed for brands to strike smarter music deals from a stronger bargaining position. As a consultant, I'm often engaged as "fire fighter" when deals have gone wrong. I frequently see the same problems, many of which can be avoided with the right knowledge and tactics.

This book contains a step-by-step guide to cost drivers and tools to manage them. These are rooted in competitive tendering i.e. the practice that treats music sourcing as an opportunity for music rights owners within a competitive environment. I debunk some of the common urban myths and stress the importance of bringing music much earlier into the planning process.

Brands sometimes fail to fully respect that music is intellectual property ("IP") controlled by third parties who will fiercely protect it from unlicensed use. We'll examine how unauthorised usage occurs and how to avoid it by aligning media schedules with licence terms.

Why now? The trend towards decoupled TV production has been growing in strength since the late 2000s with some markets further ahead than others. In the UK, the industry trade bodies, Incorporated Society Of British Advertisers ("ISBA") and Chartered Institute of Procurement & Supply ("CIPS"), have helped educate their members whilst

internationally the World Federation of Advertisers ("WFA") has been very influential. I've had the privilege to speak to the members of all three organisations and delegates at the ProcureCon conference. In these sessions I encountered a keen appetite to learn more about music rights procurement with a view to decoupling it from creative agencies.

Now is therefore an appropriate moment to publish the first practical guide to music rights, licensing and procurement specifically written for brands. It comes at a time when several pioneering UK brands have already fully decoupled TV production from their creative agencies, moving it into international production agencies. My consultancy, Resilient Music, has been fortunate to collaborate with these companies who are focused on process and efficiency without undue influence on the creative musical direction from their clients' creative agencies.

Music Rights Without Fights has been written specifically for brand marketers and their colleagues in marketing procurement who want to understand how music rights work and engage with the music industry in a less adversarial manner. I hope you find it useful.

SECTION ONE

How is the music industry structured?

In this section, we'll unpick the key components of the fragmented music rights industry. Primarily, the difference between songs and recordings; their respective owners, music publishers and record labels. We'll then examine the role of performers; both featured and non-featured artists, and their respective representatives.

INTRODUCTION

Copyright in musical compositions and sound recordings is enshrined in law. In the UK the applicable legislation is the Copyright Patents and Designs Act 1988 and subsequent amendments. As a marketer, you won't want to get bogged down with legalese but it's important to understand that when you use music in your campaigns, you're effectively "borrowing" someone else's intellectual property ("IP"). The copyright owners of that IP are fully entitled to protect it and expect to be properly paid when a brand uses it. That's why brands require licences which grant permission to use music, setting out the agreed usage limitations and applicable fee.

You'll probably be aware of different categories of music that can be used within marketing campaigns. I'm not talking here about musical genres, but instead the source of the music which dictates how it's bought. Broadly speaking there are three categories:

- **Production Library Music**
- **Bespoke Music**
- **Commercial Catalogue**

Let's look briefly at the attributes of each category.

Attribute	Production Library	Bespoke Music	Commercial Catalogue
Analogous to	Stock Image Library	Commissioned Photo Shoot	Iconic Image Or Photo
Clearance Status	Pre-cleared	Requires Commissioning Agreement	Prior Approval Required
Rights Ownership	Single Owner	Single Owner (composer)	Multiple Owners
Agreement Type	Single Licence	Licence or Assignment	Multiple Licences
Instrumentation	Usually Instrumental	Usually Instrumental	Vocal or Instrumental
Created primarily for	B2B usage	B2B usage	B2C consumption
Available for public purchase	No	Usually No	Yes
Cost	Rate Card	Predictable	Highly variable
Risk	Very Low	Low to Medium	High

As a marketer, it's important that you understand the difference between these three categories as the time, cost, process and risk implications are significant.

In *Music Rights Without Fights,* we'll focus our attention on the third category*: commercial catalogue music.* This is the most complex and difficult category where brands and agencies often make mistakes. That said, I do also advise clients on bespoke music when asked to do so.

CHAPTER 1

The difference between songs and recordings

In this chapter we'll examine the separate legal copyright that exists in songs and sound recordings. This is a fundamental principle for marketers to grasp in order to successfully license music into brand campaigns.

As a consumer of music, you don't need to worry about who controls the music you listen to. If you're still buying CDs or you're one of the growing ranks of vinyl revivalists, you might read the sleeve or liner notes and notice the various credits for record label, music publishers, record producers, songwriters and session musicians. If you're listening to downloads or streams, sadly, you don't usually have the luxury of sleeve or liner notes; and provided that you've purchased the music from a legitimate source, how these people get paid is not your concern.

All this changes in your role as a marketer. Now you do need to understand the roles and rights of the different parties and recognise a key fact:

- **You generally can't buy all the rights in one commercial catalogue music track from one source**

At the start of this journey it's necessary to accept that music rights are fragmented and, as much as you might want them to be simple, they are not and probably never will be. For this reason, music is fundamentally different from buying talent or photography where typically you engage with only one supplier, usually an agent. With music, there are multiple parties and that's only one reason why it's complicated.

At a basic level there are two distinct copyrights that marketers need to understand:

- **Song – a.k.a. "musical work" or "composition" which may include lyrics**
- **Sound recording – a.k.a. "master" or "master recording"**

Without the song, there can be no sound recording. The song comes first and the sound recording embodies it or is a carrier for it. So the song can exist without the recording – you can sing a song without having recorded it. However, the recording can't exist without the song having first been written.

(i) Composers, lyricists, songwriters

Historically songwriters and recordings artists had distinctly separate careers. This isn't the place for a very detailed history lesson but it's worth knowing about some of the iconic professional song-writing teams who wrote hits for the recording artists of their day. To name a few: Jerry Leiber and Mike Stoller (*Hound Dog*, *Jailhouse Rock*), Carole King and Gerry Goffin (*Take Good Care Of My Baby*, *You Make Me Feel Like A Natural Woman*), Burt Bacharach and Hal David (*Raindrops Keep Falling On My Head*, *I Say A Little Prayer*, *Walk On By*) . Typically, but not always, one composed the music, and the other wrote the lyrics.

In Berry Gordy's Motown Records, he built a roster of incredible song-writing teams including Holland, Dozier and Holland (*Baby Love*, *You Can't Hurry Love*, *Reach Out I'll Be There*). These songwriters are legendary to music aficionados but the general public rarely know their names.

As a consumer, you're usually focused on the recording artist – the face of the music. So you may not care who wrote the songs. However, as a marketer, the creators of the music are the most important people. Without their approval, you cannot use their work, whichever version whether that be an original artist recording, cover recording or re-record.

It's received wisdom that, from The Beatles onwards, many artists wrote their own songs though this doesn't necessarily matter to music consumers. However, as a marketer, it's important to recognise that these music acts wear two hats. So, with The Beatles:

John Lennon and Paul McCartney were the principal songwriters

John Lennon and Paul McCartney were two members of a four piece recording artist

In more contemporary artists, sometimes all the members are credited as songwriters. For example, this is the case with U2 and Coldplay. The key point being:

- **The role and rights of songwriters are separate from those of recording artists**

This remains true even if the songwriters and artists are the same people – and that's so often misunderstood by brands and their agencies.

(ii) Featured artists, non-featured artists, cover artists, re-records

If you're comfortable with the fact that songwriters create songs, then as a marketer you need to understand that recording artists create sound recordings – even if the songwriters and recording artists are the same people.

We'll look now at the distinction between featured and non-featured artists in music. Confusingly these same terms are also used for visual artists / acting talent in TV commercials, though that's an entirely separate issue.

Featured Artists

Let's consider a band as a recording artist; let's use Coldplay again as an example. It's a band of four guys; Chris Martin, Guy Berryman, Jonny Buckland and Will Champion, who are collectively known as Coldplay – together they are the "featured artist" on their records because they are all signed to the record label that owns their recordings. In Coldplay's case it's the iconic Parlophone label, once home to The Beatles within EMI but now part of Warner Music Group.

Non-featured Artists

Let's now think about a contemporary solo artist – and let's use Adele as an example. Her phenomenally successful "19" and "21" albums of course embody her incredible voice on the sound recordings – Adele being the featured artist because she is signed to the record label XL Recordings, part of Beggars Group, which owns the recordings. However,

the recordings also feature many different session musicians – also called "non-featured artists". One of these is the excellent pianist and musical director Miles Robertson who has accompanied Adele since early in her career.

As we'll see in later chapters, this distinction between featured and non-featured artists is important for marketers to understand because generally, though not always:

- **Record labels license recorded performances of featured artists**
- **Performers unions license recorded performances of non-featured artists**

This is often overlooked, particularly by advertising agencies, who sometimes fail to recognise that the separate rights of session musicians need to be licensed and paid for as well. This misunderstanding can occur if (i) the agency assumes that the record label controls all rights in the sound recording and the recorded performances on it and (ii) the record label doesn't clearly communicate up front if that's not the case.

So, now you're familiar with featured and non-featured artists on what is commonly known as an original artist recording – This is usually the recording by the artist that originally made it famous.

However, brands and their agencies sometimes want to find an alternative recording of a song or even create their own new recording. How does this work?

Cover Artists

Generally, a "cover" or "cover recording" is an existing recording of a song made by a different featured artist *after* the original artist recording was made.

Going back to The Beatles, let's consider "With A Little Help From My Friends". The Beatles originally recorded it in 1967 as part of the iconic *Sgt. Pepper's Lonely Hearts Club Band* album. Unusually, it was sung by drummer Ringo Starr rather than Paul McCartney or John Lennon. This is the original artist recording controlled by EMI Records Ltd – though now controlled by Universal Music Group following its acquisition of the Beatles' recorded catalogue.

The following year, in 1968, the late great Joe Cocker recorded his own, very different version of "With A Little Help From My Friends". This included guitar parts by Jimmy Page, who later became famous with Led Zeppelin. Joe Cocker's recording is therefore a "cover" – one of many covers of this very famous song. As a marketer you need to understand that Joe Cocker's sound recording is a completely separate intellectual copyright from The Beatles' sound recording – even though it's the same underlying song.

Just to be clear, I'm not suggesting here that "With A Little Help From My Friends" might be available to license for any advertising usage, but it's a useful example of a very famous song that has also spawned a famous cover version.

So the take-out for marketers is this:

- **The record label controlling a cover version will usually be different from the record label that controls the original artist recording (unless both artists happen to be signed to the same label).**
- **The music publisher controlling the underlying song remains constant irrespective of the recording.**
- **You must license both song and recording to use the music you want**

Re-records

Having looked at covers, let's now consider re-records which are another version of an existing song. This is a frequently misunderstood term, so let's get a few points clear from the start:

"Re-record", as commonly understood within the advertising and marketing sectors, means a newly commissioned sound recording of an existing song. Usually it is specifically created for use in a marketing campaign and does *not* contain any elements of the original artist recording. That said, sometimes recording artists will re-record their earlier songs once they're free from restrictions of a record label recording contract.

"Re-mix" usually means taking digital audio file "stems", which may have been copied from the original multi-track recording session tape, to create a new mix specifically for use in a marketing campaign. It *does* contain elements of the original artist recording.

"Re-working", "Re-invention", "Re-imagining". These terms have no commonly understood meaning among music rights owners, brands and agencies so their use may potentially encourage copyright infringement even when innocently used by marketers and agency teams.

Why do brands and agencies use re-records?

- **Re-records are usually, though not always, cheaper for a brand or agency to license than the original artist master recording.**
- **Re-records allow the opportunity to present a well-known song in a different guise.**

In the UK, the retailer John Lewis has won both industry and consumer praise for their Christmas TV campaigns which usually feature famous songs covered in an engaging way. Examples include:

Guns N' Roses' "Sweet Child O Mine" – covered by Taken By Trees
Elton John's "Your Song" – covered by Ellie Goulding
The Smiths' "Please Let Me Get What I Want" – covered by Slow Moving Millie
Keane's "Somewhere Only We Know" – covered by Lily Allen

Now let's consider where re-records are sourced from. Broadly speaking, re-records are created by two different supplier groups:

- **Professional arrangers / producers, who may be part of a music production company. Typically they are not exclusively signed to a record label.**
- **Recording artists who typically are exclusively signed to a record label.**

The approach required to successfully navigate the above supplier groups varies significantly but can be summarised as follows:

Professional arrangers / producers

- **Engagement / Commissioning Agreement**
- **One contracting party – arranger / producer or music production company**
- **Should include all sub-contractors e.g. session musicians, studios**
- **Re-record can be agreed on a licence or assignment basis**
- **Song must still be licensed separately and additionally from the applicable music publisher(s)**

Recording artist

- **Artist's recording services agreement – via artist's manager**
- **Artist waiver – via artist's record label**
- **Master synchronisation licence – via artist's record label**
- **Agreed on a licence basis only**
- **Artist's record label will own the recording even though brand financed it**
- **Song must still be licensed separately and additionally from applicable music publisher(s)**

(iii) The urban myths around Public Domain

The topic of "public domain" or "out of copyright" is usually misunderstood by brands and agencies which can lead to very expensive mistakes when incorrect assumptions are made. My explanation here is designed to be practical for marketers rather than drafted

in legal language. Across most European Union (EU) States, the current copyright laws dictate that:

- **Songs, compositions and lyrics are in copyright until seventy years after the end of the year in which the creator died. Where there are multiple creators, the entire work remains in copyright until seventy years after the end of the year in which the last creator died.**
- **Sound recordings are in copyright until seventy years after the end of the year in which they were first commercially released.**

On the surface this seems simple and so many marketers and agencies mistakenly assume they can start using songs or sound recordings which they believe to be out of copyright without paying licence fees. Sadly, that assumption is flawed for several reasons:

Generally
Whilst there is almost a harmonisation of copyright law across members of the European Union, laws vary elsewhere, especially in the USA. Therefore, for any online marketing campaign that isn't geo-locked to specific markets, there's significant risk that a song or recording that is out of copyright in one market might still be in copyright elsewhere.

Songs / Compositions
In the UK, it's perfectly legal to register a new arrangement of an out of copyright song or composition as a new work. For example, if a brand or agency commissions a music production company to create a new arrangement of "Eine Kleine Nacht Muzik" by Wolfgang Amadeus Mozart (1756-1791), they will almost certainly register their new

arrangement as a new work and charge a license fee for its use. The key proviso is that the supplier must use Mozart's original score as a reference and not copy another registered arrangement.

Following this idea, even if a brand wishes to use an existing recording of an out of copyright song or composition, it's often the case that someone has already registered the arrangement as a new work. Even if it's a recording of a classical composer's original manuscript score, sometimes the conductor or ensemble leader will register their interpretation as a new arrangement – so the new work is in copyright.

Smart brands keep a watchful eye on compositions that "fall out of copyright". For example, in 2005 the classical works of Edward Elgar and Gustav Holst became public domain in Europe given that both composers died in 1934. I recall hearing Elgar's famous "Nimrod" from *Enigma Variations* in UK radio commercials in early 2005 where brands or agencies took advantage of the work's change in status. The same would be true for Holst's *The Planets* of which "Mars, The Bringer Of War" is well known.

Most recently, a ruling by a US federal judge has deemed the copyright claim to "Happy Birthday" to be invalid in the USA which may be of comfort to American producers of video content. That said, the work remains in copyright in other markets so the situation is far from simple for brands wishing to use it in a global context.

Sound recordings

There's a perspective among some music lawyers that a new copyright exists in a newly mastered version of an out of copyright sound recording. To clarify, this argument

accepts that nothing has changed to the sound recording other than an upgrade in the sonic quality usually by digital audio processing to remove hiss, crackle and other noises. Across most EU States, any sound recording that was commercially released more than seventy years ago should theoretically be public domain. However, that assumption would only be truly safe if you could access an original 78 rpm shellac gramophone record dating from that era rather than a re-mastered vinyl disc, CD or digital audio file from a later time period. To support the argument that the sound recording is public domain, you need an actual physical copy that's more than seventy years old.

Also, as previously mentioned, copyright laws vary across markets. In the USA, the term of copyright in sound recordings is ninety-five years. So, if a brand attempts to use an American controlled recording of a younger date and claim it's public domain in the UK, you can expect a legal claim. Similarly, if you attempt to use an EU State controlled recording aged between seventy and ninety-five years in an online campaign that's visible in the USA, again you can expect a claim.

If all this seems difficult and complex, it is. So what's the take out for brands?

- **Never assume that a song or recording is out of copyright and available to use freely, even if your agency claims it is.**
- **For any use related to brand marketing, music rights owners will, wherever possible, try to claim a title is still in copyright in order to extract a licence fee.**
- **Always get assistance from a suitably qualified expert or music lawyer before relying on any form of out of copyright / public domain protection as a means to avoid paying licence fees.**

- **It will always be cheaper to check copyright status first than to take a risk and pay penalty fees afterwards.**

Chapter summary

In this chapter we've examined the legal distinction between songs and recordings which is essential for marketers to grasp if they're to take greater control of music licensing. We've learned about:

- **The rights of composers, lyricists and songwriters**
- **The rights of featured and non-featured artists**
- **The issues involved when using re-records or cover versions**
- **The complexities surrounding public domain status**

As you read through this book, it might be useful to jot down some notes to record your thoughts.

Reader's notes

(i) Big Mental Note

(ii) One Big Step

THE AUTHOR

Richard Kirstein is the UK's leading independent expert on music rights buying for brands. During a career spanning over twenty years, he has brokered several thousand music licences, acting for both rights buyers and sellers. He is a regular speaker at conferences in the UK, Europe and USA.

Since 2010, Richard has been Founding Partner of Resilient Music LLP, a successful specialist consultancy with team members in London and New York. Resilient's clients include some of the world's largest consumer brands in thefashion, automotive, financial services and alcoholic beverage sectors.

Prior to Resilient, Richard was Managing Director of Leap Music, a joint venture he established with advertising agency Bartle Bogle Hegarty (BBH). Leap was the first music publishing company inside a UK creative agency, upsetting many in the music industry by empowering brands to acquire copyright in bespoke commissioned scores. During Richard's tenure, Leap also negotiated over one thousand sync licences for music in TV spots.

Before Leap, Richard was Head of Film, TV & Media at Zomba Music Publishers. Richard established Zomba's UK sync licensing team, brokering deals for songs recorded by artists ranging from Bruce Springsteen to Daft Punk. He also brokered publishing administration deals with TV broadcasters and production companies including Channel 4 and Aardman Animations.

Richard is a music graduate from The City University, London and Guildhall School of Music and Drama. He continued his education at Dartington College of Arts and London Business School. Outside Resilient Richard attends many gigs, composes music for several UK production music libraries and occasionally plays keyboards in cover bands. He lives outside London and has two teenage sons, both musicians.