**Music and Dance TV Series:**

**How Music is Licensed**

By

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With the proliferation and popularity of music and dance centric television shows (**“The Voice,” “American Idol,” “So You Think You Can Dance,” “Dancing With the Stars,” “Sing-Off,” and “America’s Got Talent”**) and the present and future needs of the producers of this type of programming with respect to delivery platforms and distribution media, a number of options have been inserted into the music synchronization license for this genre of series.

But with all these options (which usually relate to downloads, streaming, ringtones, ringbacks, expanded territories, expanded distribution platforms, out-of-context promos, etc.), it is essential to understand the primary considerations which are involved in the initial licensing of a song (or master recording, if applicable) for use in one of these series, since many of the options and the additional fees may or may not be exercised by the television production company.

1. Timing and Use

First of all, the initial synchronization fees themselves for the use of a song or master are often based on either timing or manner of use in a particular episode.

For example, one show (**“So You Think You Can Dance”**) has four categories of timing (i.e. “up to 0:30,” “from 0:31-1:00,” “from 1:00-2:00,” and “2:00 and over”) with different synchronization fees attached to each. Obviously, the longer the use, the larger the fee.

Another show (**“American Idol”**) uses two categories for use in the initial episode (“up to 1:00” and “over 1:00”), but has two other categories for “results episodes” or “subsequent episodes” (“up to 0:45” and “over 0:45”). All categories have different fees with the prices for the initial use larger than the other episodes mentioned above.

A third example (**“America’s Got Talent”**) separates the categories into actual “contestant performances” and “non-contestant performance music beds” (the latter defined as “background instrumental and/or vocal for contestant bio package, montage, act open, story package, or judges deliberation package”).

The contestant performance price structure has separate fees for “up to 0:30,” “0:31-1:30,” and “1:31-2:30” (plus 0:10 recaps in the same episode). There are additional fees for a short additional recap up to 0:25 in the same episode and multiple recaps in future episodes up to 1:30.

As for the non-contestant performance bed timings, there are increasing fees starting at “up to 1:00,” then “1:01-2:00,” and finally “2:01-4:00”.

As for **“The Voice,”** there are four different timing categories which are also based on how the song or master is used in the episode.

The first is the actual on-camera performance by the singer. The two fee categories are “up to 1:30” and “over 1:30”. These are both aggregate timing categories.

The second category includes package clips (including auditions), finale retrospective re-use clips in other episodes (including “previously seen” or “coming next week” clips). Fees are based on “up to 0:10,” “0:11-0:25,” and “over 0:25”.

The third category is “impromptu vocalizing of songs not to exceed 0:10” (for example, in rehearsal or on stage during dialogue with coaches, host, or other persons).

The fourth is “snippets of contestant performances being reviewed by the contestants, coaches, and/or host in short after-show interviews to be streamed/posted on nbc.com and hulu.com for six months”. Fees are dependent on the use, being “up to 0:10,” “0:11-0:25,” and “over 0:25”.

With respect to the “**Sing-Off”** series, four categories of use are used with fees based on timing.

The first is “performance uses” (aggregate within the episode including package clips) with different fees based on the use being either up to 1:30 or over 1:30.

The second is “package clips” including auditions, home story packages, finale retrospectives, re-use of clips in subsequent or prior episodes including teaser recaps and precaps (e.g., previously seen or “coming next week”). Fees are based on uses up to 10 seconds, 11 to 25 seconds and over 25 seconds.

Impromptu vocalizing of songs (in rehearsal, during dialogue with judges, hosts or other persons) not to exceed 10 seconds is the third category.

And bumpers (a cappella performances leading into or out of commercial spots of songs not performed in the episode) is the final category with separate fees based on uses up to 35 seconds and uses over 35 seconds.

And finally, there is **“Dancing With the Stars”**. Because of the multiple ways and options as to how songs and master recordings are used, there are six usage and timing categories, all with separate fee arrangements, as follows:

1. “visual dance” up to 1:45 plus a 0:10 recap or single use up to 1:55
2. “extended dance” (2:30 aggregate timing) plus a 0:10 recap or single full use
3. “short recap” which is a single recap up to 0:25 in a future episode
4. “single/multiple recaps” up to 1:30 in a future episode
5. “extended recap” (single/multiple recaps not to exceed a full repeat in a future episode)
6. “last dance” in the closing credits

It should also be noted that these timing and usage categories may change from season to season but the changes are usually not that substantive.

2. Music Cue Sheets

Because of the various timing and manner of use categories in the initial synchronization agreement, it is very important that the music cue sheet for the particular episode be checked since all the life of copyright back-end performance royalties(ASCAP, BMI, SESAC, foreign societies, etc.) are dependent and based on the descriptions and information contained in the cue sheet.

For example, you might have designations such as “preview from upcoming episode on-camera performance by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,” “tease on camera performance by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,” “recap from episode \_\_\_ on-camera performance by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,” “recap of episode \_\_\_ video clip of relative performing song,” and “on-camera performance by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”.

Another type of music cue sheet may just have the following designations as to timing and use:

Timing Inst./Vocal

0:35 BV

0:31 VV

0:20 BI

2:10 BV/BI

A third type of cue sheet may have the music identification information structured as follows:

Timing Use

0:30 Bknd. Inst.

0:45 Bknd. Vocal/Visual Dance

2:10 Visual Voice/Visual Dance

0:20 End Credits

Another series uses the following type of language which describes how the composition was used and its duration:

Use Timing

OT 0:20

(Opening Theme)

BV 0:15

(Background Vocal)

BI 0:20

(Background Instrumental)

CT 0:55

(Closing Theme)

BI 0:03

(Logo)

In addition to the timing and use information, the music cue sheet also provides the song title (or cue identification, if applicable), the identity of the composer and lyricist, the name of the publishing company/copyright owner with respect to each of the writers and performance right affiliation (e.g., ASCAP, BMI, SESAC, BUMA, PRS, SACEM, GEMA, IMRO, SGAE, SIAE, etc.). It is essential that all of these items be correct since attention to detail is the key to receiving proper performance royalties. Obviously, if there are any mistakes and/or inaccuracies in the cue sheet, such should be corrected immediately since these cue sheets are distributed worldwide.

It is also customary for the production company to provide a copy of the music cue sheet to the music publisher within a certain number of days after the initial broadcast or other distribution of the episode as this is virtually always part of the license. The production company should also transmit the cue sheet to the performance right organizations so they can input it into their systems as well as distribute it to societies in other countries.

3. On-Screen Credit

An important issue in all of these licenses is whether credit will be given on screen; a factor which some shows provide and others do not. In many cases, the judges, host, or the performer will verbally announce the title of the composition, but, in some cases, the title and recording artist are actually shown on screen at the start of the performance. For example, “**So You Think You Can Dance”** gives on screen credit for the title of the composition and recording artist at the start of each dance performance.

4. Download Availability

An additional significant issue is the iTunes (or other download site) availability of the song and performance featured in the episode, and the reference on-screen with the specific link information during or after the performance. Once again, certain shows provide this and others do not. Examples of shows that provide the link information for downloading of performances are “**American Idol”** and “**The Voice”.**

5. Performance Right Royalties and How Values Are Arrived At

An important aspect of any synch license negotiation is the backend royalty consideration…how much a musical work will earn from ASCAP, BMI or SESAC when it is performed in an audio-visual context (broadcast television, cable, Pay-Per-View, online streaming, etc.).

ASCAP ( the American Society of Composers, Authors and Publishers), BMI (Broadcast Music Inc.) and SESAC are U.S. performing rights organizations which negotiate license fees with the users of music, collect those fees and distribute them to songwriters, composers and music publishers who have performances in specific media. It is important to keep in mind that all 3 organizations have different payment formulas and rules for each type of use and media resulting in different payments from each organization for the very same type of performance (e.g., a network television prime time episodic series theme song, score in an HBO series, etc.)

There are many factors determining the royalties due a performance in the audio-visual area including the type of use (theme song, visual vocal, on camera instrumental, dance routine, score, etc.), the time of day of the performance (prime time, afternoon, morning, overnight), the duration of the use, the audience viewership of the program, the specific Nielsen rating of the series episode, the past history of radio and television performances of the song, the number of airings in a quarter and the special payment and bonus practices and rules in effect at each performing right organization at the time the performance occurs.

Further, the payment rules and practices of each organization are subject to change at any time, many times without notice to writer and publisher members and affiliates. In addition, license fee negotiations(whether industry wide or specific user only), Rate Court decisions, settlements, litigation and legislation all can have a major influence on past, current and future performance values. All of these factors need to be continually monitored by anyone involved in these types of transactions.

6. Performances in Foreign Countries

It should also be emphasized that a major source of backend royalties for many songwriters, composers and music publishers comes from performances in "overseas markets". Every major country of the world has a performance right organization (PRO) which, via reciprocal agreements with ASCAP, BMI and SESAC in the United States, collect for performances of U.S. music in audio visual works in their respective territories(movie theaters, broadcast stations and cable services, Satellite, online streaming and downloads,etc.). Keep in mind though that each of these foreign country PROs have their own payment and distribution rules which are many times very different from the rules employed by the U.S. PROs.

For example, PRS for Music in the UK pays every type of use on television with only duration being taken into account in addition to one time of day factor. SOCAN in Canada, on the other hand, has payment distinctions based on whether the performance is a theme song, score or an individual singing a song on camera. Also, just as in the U.S., foreign societies do periodically change their payment rules and practices thereby affecting royalty payments. Foreign country litigation and legislation also affect what is actually licensable as well as what a performance is worth.

7. Some Final Thoughts

As you can see, there are many considerations one must take into account when you are granting a synchronization license for this genre of television. Duration, type of use, credit, accurate cue sheets, subsequent uses, back end royalties both in the U.S. and foreign countries and the exact meaning of the multiple types of options that are included in these deals are all factors that need to be considered and hopefully understood.

The reality of many of these types of shows is that there is little negotiation as to the initial upfront synch fees as many are on a "most favored nations" basis and the only response the producers are looking for is a quick Yes or No("Yes" you are in the show; "No" you are not). Despite that trend, it is important that you understand what you are getting into as well as all of the future financial possibilities that can come from a single performance of one composition in one series episode.

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