

## **Intellectual Property Licensing for Media Replication**

Because of the Internet and other technological developments, there are many creative ways in which individuals can easily infringe on another's intellectual property rights when creating their own works, sometimes without even being aware of the infringement. Due to the current legal environment in the media industry, it is very important for you and VCR Active Media to assure that proper permissions have been secured for any CD and DVD replication order. Failure to properly license intellectual property used in a replication order can result in significant monetary legal damages against you and any other party involved in your transaction, including brokers and VCR Active Media. This is true even if you are not aware that you have infringed on someone else's rights. It is ultimately your responsibility to make sure you have all the applicable intellectual property rights.

### **What is a license?**

A license is a legal means for an intellectual property rights (IPR) owner to grant permission for a specific use of their intellectual property. The rights to software products, recorded audio tracks, published music and motion picture assets not in the public domain are all owned by a person or organization. If you wish to utilize any of these assets on your disc order and you are not the IPR owner, you must secure the rights to do so through a license from the IPR owner. If you are the actual IPR owner, you must state this in writing to VCR Active Media through an Intellectual Property Rights form available from VCR Active Media. You must also provide VCR Active Media with all necessary documentation to evidence your rights ownership.

A license can take the form of:

- a formal letter from the IPR owner on their letterhead indicating the specific use granted for their property (a grantor of rights letter template is available from VCR Active Media).
- a formal document of registration from an organization that serves as a licensing clearinghouse.
- a copy of a contract or formal agreement that exists between the user of the property and the owner of the property.

### **What must be licensed for use and who can grant that license?**

Software products, recorded audio tracks, published music and motion picture assets may all need to be licensed for use. Determining whether licensing is needed may require performing research with licensing clearinghouses, Internet search engines, copyright searches or an agency that specializes in this activity. Intellectual property law can be very complex and may not always be very definitive. In all cases, proof must be demonstrated to VCR Active Media's satisfaction that appropriate licensing has been granted to the individual or organization that has procured the CD or DVD replication order. VCR Active Media reserves the right to request additional information in order to verify the licensing information being provided, as well as to contact the underlying rights owner to confirm the validity of the license.

**Software:** The licensing needs for software products are determined by the vendors creating the product. Most commercially available packages require a Software Distribution Agreement. This is different from the End User License Agreement that you traditionally see when you install a software package on your computer. Some freely distributed programs still require distribution licensing even though they are free (like web browsers). You should consult the software vendor to find out their specific requirements. Some software companies allow you to register for a distribution license of their products on the web.

**Audio:** Recorded audio tracks require two different types of licensing:

- license for the recorded track from the artist.
- license for the published song used in the recording from the music publisher.

The recorded track license must demonstrate a chain-of-title from the actual recording artist or organization representing the artist to the individual or organization procuring the DVD or CD order. NOTE: All recorded tracks created since 1972 are protected by Federal copyright, so performing a copyright search may be helpful in determining the current IPR owner.

Use of a published song on an audio recording requires a per copy fee to be paid to the music publisher. These fees are called mechanical royalties. Mechanical royalties can be paid directly to the publisher, or the publisher can establish a relationship with an agency to handle the negotiation of royalty payments, collections and disbursement to publishers.

In the United States, mechanical royalty payments can be registered and made through online services like Songfile (<http://www.songfile.com>) or through the Harry Fox Agency (HFA) (<http://www.harryfox.com>). Songfile can be used strictly through the Internet for limited quantities and specific uses. Songfile will send an email response with appropriate registration information. HFA can be used when Songfile is not applicable. Please consult Songfile's site to determine when it can or cannot be used. HFA can also provide a license for song use. In the future, HFA activities will be available through the Internet.

In Canada, the equivalent agencies are: the Canadian Musical Reproduction Rights Agency Ltd. (CMRRA) and the Society for Reproduction Rights of Authors, Composers, and Publishers In Canada Inc. (SODRAC). Presently, these agencies cannot perform license registration online. Actual licenses may take weeks to obtain, but you can contact the agencies in advance to receive email permission for manufacturing purposes.

A term commonly used in the music industry is Compulsory License. This is when a published song has been previously recorded by an artist and another artist wishes to re-record it. Federal copyright law allows for a compulsory license, which gives an artist the ability to re-record a song and pay a pre-defined mechanical royalty rate as established by the Federal Government. Agencies like Harry Fox also allow for registration of these licenses. Compulsory licenses only apply when the song has already been recorded by another artist.

Sampling is when portions of a previously recorded audio track are utilized in creating a new audio track. For tracks to be sampled, appropriate audio licensing for the sampled track is required from the recorded track IPR owner and the music publisher.

Audio utilized from production music libraries also requires licensing for replication. The licensing may be in various forms depending upon the music library vendor. Traditionally, a Master Use Agreement will be issued by the music library vendor when the specific usage fees for the chosen music are paid.

**Video:** Legal protection for video and motion picture assets was established under Federal copyright law since 1912. Most major motion pictures will have a registered copyright. Even though a motion picture can have a terminated or expired copyright, other aspects of the work may still be covered through other copyright protection (i.e. musical soundtracks, use of the likeness of individuals, etc.). Addressing the copyrights of a motion picture can be very complex and may require legal assistance.

When putting together a multimedia application that involves video and music, music licensing may also be needed. If a recorded audio track is used in conjunction with a video and the resulting product is to be sold to the public the following license(s) would be needed from the IPR owner(s):

- a Videogram license for the recorded track from the IPR owner of the recorded track
- a Synchronization license provided from the music publisher.

### **What is "Public Domain" and when does it apply?**

Public domain pertains to creative work that is not protected by law. Intellectual property rights generally would not apply to items considered in the public domain. For this to occur, either copyright protection for the work would not be applicable, or the copyright must have been terminated or have expired. A claim that a creative work remains in the public domain and does not require licensing use should be substantiated by a legal opinion from the customer's legal counsel. This type of legal information is required from the customer in absence of proper licensing. As mentioned earlier, there are agencies that specialize in license searches and can give their opinion on whether an asset is in the public domain.

### **What does VCR Active Media need?**

With every new order, VCR Active Media must have proof that each customer possesses the rights to replicate the contents of all CD and DVD orders. VCR Active Media can provide the customer with an Intellectual Property Rights form. The IPR form must be completed by the individual or organization that is the originator of the disc order. However, even if the form can be completed stating that the customer is the IPR owner of the entire disc contents, VCR Active Media retains the right to require additional information in order to verify, in VCR Active Media's discretion, the information contained in the form.

If the customer is not the IPR owner of the disc contents, then the appropriate additional licensing documentation must be provided for all audio tracks, software and video assets. VCR Active Media will review all of this information, including disc contents. Trained personnel will use various tools to analyze the source media and information received. Any inconsistencies will be reported to the customer for clarification. This review, however, does not relieve you of your responsibility for making sure that all appropriate licensing has been obtained, and you will be required to indemnify and hold VCR Active Media harmless if any of the material provided is found to be infringing.

In summary, if you are not the IPR owner of any assets used on your project, the following are the minimum types of agreements that you should pursue in support of your CD or DVD replication order:

- Software Distribution Agreement.
- License for use of a previously recorded audio track.
- Mechanical License from the music publisher.
- Compulsory License from the music publisher if song has been previously recorded.
- Master Use Agreement for any production music library material.
- Proof of Copyright for motion picture or video material.
- Videogram license for recorded audio tracks used in video/motion picture to be sold commercially.
- Synchronization license from the music publisher for use of song in any video/motion picture.
- Legal proof that an asset is considered to be in the Public Domain.

If you are not the IPR owner, VCR Active Media does have available a Grantor of Rights letter template that may be used by the actual IPR owner in producing the necessary documentation. Both the IPR form and the Grantor of Rights letter template are available at <http://www.cinram.com>.

VCR Active Media reserves the right to request any additional information it feels appropriate in order to confirm that all required intellectual property rights are present. VCR Active Media also reserves the right to accept or reject any orders it receives, in its sole discretion.

## **Instructions For Completing the Intellectual Property Rights (IPR) Form**

**Customer #:** Your VCR Active Media assigned 4-digit customer number (if known)

**Selection #:** Unique identifier for the order provided by the customer

**Album/Project Title:** Name of project

**Distribution:** How the resulting discs are going to be distributed to consumers or users.

**Countries Where Distributed:** Where the discs will be distributed to consumers or users.

**1. Are you the IPR owner of the entire disc contents, including all software products, recorded audio tracks, and video content?**

If you own the intellectual property rights to the all of the disc's contents, mark the answer YES.

If you are NOT the owner then you must get replication licensing permission from the actual IPR owner. For this circumstance, mark the answer to this question as NO.

**2. CD-ROM / DVD-ROM Content**

List on the form (or on separate sheet) all of the software, freeware, and shareware products included on the disc for which you are not the IPR owner.

If you license any these products for inclusion on you disc, you must attach the appropriate distribution licensing documentation as specified by the software product vendor.

**3. CD / DVD Audio Content (including MP3 files)**

There are two different types of rights for audio:

1. Recorded track rights
2. Song writing publishing rights.

If you are an artist and record a song, you own the rights to the recorded track because it is a creative work that you created.

If you sing a song that you wrote, you own the rights to the recorded track AND the written song because they are both creative works that you created.

However, if you sing a song written by someone else, you do NOT own the rights to the written song even though you still own the rights to the recorded track. In that case, you need to pursue securing either mechanical or compulsory rights to the written song.

**For all audio content, you must**

**1. attach a track listing specifying track title, artist, and the IPR owner of the recorded track. This is required even if you own the IPR rights for all recorded tracks.**

**2. If you are not the IPR owner of the recorded tracks, then you must provide enough documentation to illustrate chain of title to the recording artist and the granting of replication rights for the specific track.**

**3. If the disc contains sampling or mixing of other recorded tracks for which you are NOT the IPR owner, you must provide licensing for these tracks as well. Any length of another track for mixing purposes requires replication licensing and publishing rights from the IPR owner(s).**

**Artist(s):** Specify all of the recording artists on this disc.

**Content/Music Type:** Specify the music genre or if it is spoken word.

**Are you the IPR owner of all song writing / publishing rights?**

If you are NOT the owner of the song writing / publishing rights for those songs included on the disc, specify NO.

If you are the IPR owner of the song writing / publishing rights (in most cases, this is true if you are the actual songwriter), then specify YES.

**\*If NO, have you secured or are you actively pursuing those song writing rights?**

If you indicated that you do not own the song writing / publishing rights, specify if you have secured these rights or you are actively pursuing those rights for your disc. VCR Active Media reserves the right to request additional information to verify your song writing / publishing rights and/or your efforts to obtain a license for those rights.

#### **4. CD / DVD Video Content**

If you are not the IPR owner of the video content, you must provide proof of replication licensing from the IPR owner.

If audio tracks are licensed separately for use in the video, then provide any necessary audio/video synchronization licensing.

At the bottom of the form, PRINT the name of the organization that has placed the order and is the ultimate end-customer. This would NOT be a broker or intermediate party. THIS IS REQUIRED.

The SIGNATURE and PRINTED name of the representative from this organization is REQUIRED.