

NEWSLETTER

An Entertainment Industry Organization



Licensing Songs For Video Games

Todd and Jeff Brabec

50th Anniversary

The President's Corner

Michael R. Morris

From the dawning of the video game age with fondly recalled names like "Pong" and "Pac-Man" (for those of us who recall the '70s anyway) to a massively growing industry that grossed \$9 billion last year and features titles like "Def Jam Fight for NY," "Tony Hawk's Underground 2" and "Mortal Combat Deception," the video game industry has become a major player in the entertainment field. Boasting remarkably sophisticated interactive technology and graphics straight from George Lucas' most vivid dreams, video games are one of the fastest growing phenomena in the entertainment world. Especially significant is the marriage of video games and music, a union that has made video games a major player in the music industry.

Tonight, the CCC proudly presents "The Sound of the Game," featuring prominent video game producers, music composers and supervisors who will discuss the exciting convergence of technology and music within the video game business, and offer a look into the future of what has evolved from the humble beginnings of "Mario" and "Donkey Kong" to an exploding cultural force that rivals

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In recent years, the video game industry has been the fastest growing area of the entertainment business, and music is a major part of many of these games. For songwriters, recording artists (new or old), film and television composers, music publishers and record companies, the video game industry represents a new and valuable source of income.

For pre-existing songs, there are a number of different ways to license music in this area depending on the success of the song being used, the type of video game, how the game is distributed and the policies of the manufacturer. Some of the major issues that will be covered in many of the licenses follow.

Music: There will be a description of the composition being used including information on the title, songwriter, publisher and percentage controlled. There should also be a description as to how the song is used in the game.

Game Title: The exact title of the game will be mentioned.

Description of The Configuration: Some descriptions are very broad and others are very specific. For example, some agreements include language covering all software programs or other electronic products in any format or platform that is designed for use with computers. Others refer to any existing electronic devices as well as any which may be developed in the future. Many also indicate the type of distribution medium on

which the game may be distributed. For example, the contract may actually mention DVD, CD-ROM, consoles arcades, handheld devices, magnetic diskettes and optical disks as permitted distribution media. Others will be less specific or mention the previous media but provide that distribution of the game will not be limited to only the areas mentioned.

Online Versions: If the game is available on-line, the agreement will have language which permits the transmission of the game over telephone lines, cable television systems, cellular telephones, satellites and wireless broadcast as well as other ways of transmission which are in existence or which may be developed in the future.

Fees: Some agreements provide for an actual royalty but many provide for a one-time buy-out fee per composition regardless of the number of games actually sold or how many times the game is played. Per game royalties range from 8 cents to 15 cents per composition and buyouts range from \$2,500 to over \$20,000. As in many other areas, royalties and fees depend upon the value of the composition, the prior history or anticipated sales of the game, bargaining power of the parties and the needs of the video game producer, music publisher and songwriter.

Term: Some agreements have a set term (such as 5 years, 7 years, 10 years, etc.) during which the song can be used in the video game. If there is a set term, the video manu-

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GAMES: THEY'RE PLAYING OUR SONGS

(President's Corner continued)

radio, television and other media in its ability to affect musical tastes and break new acts. "Thought provoking" is an understatement when describing the current state of video games, and tonight's panel will provide valuable insights into this increasingly dominant form of entertainment.

Next month, the CCC will hold its annual holiday party on December 7 at Cafe Cordiale. This is a perennially popular evening (sold out 2 years in a row), and I hope you can attend. I'll close this month's column by thanking former CCC prez Teri Nelson Carpenter for moderating last month's evening with Desmond Childs and wishing everyone a happy Thanksgiving.

Membership Opportunities

CORPORATE MEMBERSHIPS

The price of a Corporate Membership is \$250 annually. Corporate Members can send up to 10 people to each dinner seminar at the member price. In addition, each member can bring a guest at the discounted member rate. A Corporate Member can save over \$70 per meeting, and more than \$560 for the year. Our growing list of Corporate Members proudly support the CCC's long tradition of service and education.

INDIVIDUAL MEMBERSHIPS

The price of an individual membership is still only \$55 annually. Enjoy each dinner seminar at the special member rate of \$28. (The non-member rate is \$35.) All memberships are renewable in July.

CALIFORNIA COPYRIGHT CONFERENCE

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Q&A with Steve Schnur, Worldwide Executive of Music for Electronic Arts, one of the world's largest interactive software publishers.

Describe the state of the video game industry today.

The video game industry earned \$7 billion in 2003 and is growing aggressively. Today, video games are bigger than radio, games are bigger than music television, and video games are even bigger than domestic Hollywood box office ticket sales. Thirty-two years after the first electronic blips of Pong, video games — and the music we can deliver within them — are becoming one of the most essential cultural forces of our time.

Who is playing these games?

Currently, 60% of all North Americans and 40% of all Europeans play video games. The average gamer is 28 years old. Americans will spend more time playing video games this year — about 75 hours on average — than watching rented videos and DVDs. The percentage of last year's college students who had ever played video games was 100%. One-third of gamers are women, and young audiences consistently rank video games and the Internet above TV on the importance scale. According to Jupiter Research, 95% of teenage boys play video games. Yet another study reports that boys 5-12 years old are now spending more time playing video games than they are playing with traditional toys.

How has gaming impacted the way people discover new music?

The popularity of gaming has expanded the way the world hears music. A recent poll of core gamers ages 13 to 32 revealed that 40% learned about a new artist after hearing a song in a video game. One third went out and purchased that artist's CD. An average of 2.5 people play each sports game sold and the game is played an average of 50 hours per player. On the game software, songs rotate and are identified on screen at least twice each hour. Our *Madden NFL 2005* game is projected to sell between six and seven million units. That means that any given song in that game will be heard and identified millions of times.

What does your job entail?

My role is to pursue, create and continuously develop the international vision for music in our games. I began

my career as a musician in bands, became part of the original programming team at MTV and have more than 20 years experience in radio promotion, A&R, music marketing and as a music supervisor for movies. My staff comes from similar A&R and marketing backgrounds. We've formalized in-game music under the name "EA Trax" and set the industry standard for fair licensing, label cross-promotion and artist involvement. Most importantly, we've changed our relationships with the recording and publishing industries from a 'buy-sell relationship' to co-marketing partnerships. From the music we license to the music we co-create, the possibilities for new revenue opportunities are limitless.

How do you choose the music for your games?

All EA game music is specifically designed to maximize the emotional lift needed to create even greater gameplay experience. The music must be so fresh and creative that not only does the gamer discover their favorite new band and song through the game, but hearing the music will always remind them of the great time they had playing the game. The songs we select are geared to make you want to run faster, jump higher and throw longer.

That's where partnership comes in: breaking new artists is all about good music, good marketing and good timing. EA seeks unique mixes of music for each and every title. The sound of *Madden* compared with the sound of *NBA LIVE* or *Battlefield: Vietnam* is different. Even titles like *Medal of Honor*, *Lord of the Rings*, *Harry Potter* and *The Sims* are scored like major Hollywood blockbusters. Choosing the music for each and every game is an intensely focused process. We work with record labels, publishers and artists often more than a year in advance to ensure that, for every EA game, the music will matter.

How much music do you use from undiscovered artists?

Currently, more than 95% of the music in our games comes from new bands. For EA, any sports game with a year in the title must point the music forward. Everyone shares a common goal in that we must always be

on the cutting edge of new music and new trends. We want to break new artists and bring career artists to a whole new level. We can create an interactive environment where new artists, hit singles, international soundtrack phenomena and more will emerge exclusively from video games. And because nearly all the music in EA games currently comes from new acts, we are constantly creating new revenue opportunities for developing writers and artists, their labels and their publishers alike.

Have any of your games helped launch any artist's career?

In less than two years, labels have seen their artists' songs become an integral part of an artist's set-up, development and continued growth. The evidence is beyond tangible; Epic Records credits *Madden NFL 2003* as being instrumental in the breaking of Good Charlotte. Avril Lavigne was first introduced to European audiences through *FIFA Soccer 2003*. JET got their American iPod commercial based on exposure in *Madden NFL 2004*.

Over the past two years alone, superstars like OutKast, Avril Lavigne, Radiohead, Christina Aguilera, Kings of Leon, Jermaine Dupri, Nelly, Jimmy Eat World, and literally hundreds more have become an enthusiastic part of EA games.

What does the future hold for gaming and music?

The number of CD buyers who have bought digital music has more than tripled so far in 2004. Now, consider on-line gaming: of the 186.4 million console games sold in the U.S. last year, more than 23 million were web-enabled for online playing. The next generation of systems will absolutely reset the bar for both entertainment and technology in our lifetimes. Combine the possibilities of remarkable new hardware, new software, widespread broadband access and legally downloadable music. Now, imagine a world where 80% of the global population can be instantaneously exposed to new music via games, with the power to purchase literally at their fingertips. EA is currently creating the programs and partnerships that will make it a reality.

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Licensing Songs for Video Games

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facturer will many times have the right to sell off its inventory of games for a period of time once the term is over. Other licenses last for as long as the video game is in distribution. And others state that the term is for the life of copyright of the composition.

Territory: The territory of distribution is usually the world.

Companion Products: Many game producers receive the right to release the compositions used in the video game in companion products such as an audio CD or separate DVD release of the game. Sometimes fees are actually set in the agreement (for example, 100% or 75% reduced statutory rate for a CD) and other times there is a good faith negotiation provision as to the ultimate fee that will be charged for the applicable companion product.

Collateral Materials: Many agreements provide that the video distributor can use the composition in its advertising, promotional and marketing materials related to the video game. This may include in-store promotions and demonstrations, DVD trailers and even advertising over closed-network college campuses as long as the use is in-context. Such promotional usage does not include out-of-context uses or other types of advertising campaigns such as network, cable or satellite television.

Credit: Most contracts provide that credit for the composition be given on the inside of the video game packaging. Credit may also be placed in the manual for the game or actually in the digital format of the game. If there is a master recording also licensed, the notice will usually contain the name of the record company and the name of the recording artist in addition to the composition information.

Other Provisions: Notice, applicable law, audit, warranty and indemnification provisions are similar to most other license agreements.

This article, which appeared in the Summer 2004 ASCAP Playback Magazine, is based on information contained in the 4th edition of the book Music, Money, And Success: The Insider's Guide To Making Money In The Music Industry written by Jeffrey Brabec and Todd Brabec (Published by Schirmer Trade Books/Music Sales). By permission © 2004 Jeff Brabec, Todd Brabec. The book is available for sale on ASCAP's website in the resource guide.

MONTHLY DINNER MEETINGS

Held once a month, on selected Tuesdays

6:15 p.m. Check-In

6:30 p.m. Cocktails & Networking

7:00 p.m. Dinner & Meeting

UPCOMING MEETINGS

December 7

Holiday Party at Café Cordiale

January 18

Film and TV

February 15

An Evening With BMI

March 15

An Evening with SESAC

CCC WEBSITE

Our website is the place to find information on upcoming meetings and other events. Make meeting reservations, join or renew your membership online.

www.theccc.org

An Entertainment Industry Non-Profit Organization

The California Copyright Conference was established in 1953 for the discussion of copyright-related areas pertaining to music and entertainment.

Today, the scope of the CCC has expanded to cover all matters pertaining to music industry issues. The organization includes members from all areas of the music and entertainment industry, including publishers, songwriters, attorneys, representatives from trade publications, performing rights societies, motion pictures, television, multimedia, Internet, and record companies.

We invite you to join the members of the CCC as we continue to serve the music and entertainment industry by promoting dialogue about the issues of concern to all of us.