



January 10, 2017

*YOUTUBE MONETIZATION: How Rights Owners can Use, Manage and Profit*

# NEWSLETTER

An Entertainment Industry Organization

## Why Posting a Cover Song on YouTube is Copyright Infringement

by Erin M. Jacobson, Esq.

### The President's Corner

Happy New Year Friends,

Streaming...It's here and it's here to stay! From Youtube to the many other music and entertainment consumption platforms that currently exist, the main concern for everyone involved with intellectual property is 'monetization'. With tonight's panel we aim to present a closer look at how to effectively monetize YouTube and create a mindset and strategy that can be applied toward other streaming platforms. Our goal is to help content creators and those that represent intellectual properties find meaningful solutions to this expanding consumption model.

Best Wishes For All In 2017,

**James R. Leach Jr.**  
**President, California Copyright Conference**

New artists trying to get discovered will frequently cover famous songs and upload videos of them performing these songs on YouTube. Many artists do not realize that without securing the proper permissions, posting a cover song on YouTube is actually copyright infringement.

User-generated cover song videos require permission to use the composition and permission to synchronize the audio elements with the video.

In the case of a cover song, the original master recording is not used because someone else is making his or her own recording of the song and therefore no label permission is necessary. If one plans to use the original master recording in a video, that person would have to go to the master owner (usually the record label) and get a master use license to be able to pair the master recording with the video. I won't discuss the performance right here since YouTube and similar websites have blanket licenses from the performance rights

organizations. However, if an artist is uploading these videos to his or her personal website, that artist is also liable for the payment of performance royalties.

To cover a composition, one needs to get a mechanical license. A mechanical license allows someone to record a song that has already been recorded and distributed by another artist. A mechanical license is most often obtained through the Harry Fox Agency. The related royalty stream is called a "mechanical royalty" which is a royalty payable to a composition owner for the privilege of being allowed to record that composition. This is the 9.1 cent royalty often mentioned in the music business.

However, the mechanical license only covers audio recordings of the original composition. It does not cover the synchronization of the audio with the video portion, for which one needs to obtain a synchronization or "sync" license. This is where most people get tripped up because they don't get a synchronization license from the composition owner (usually the music publisher).

An artist who does not get permission from the owner of the song he is covering to synchronize his cover version with the accompanying video is infringing the copyright of the original composition.

The consequences of posting a cover song without the proper synchronization license vary. In some instances, the copyright owner(s) of the original composition don't know about the cover on YouTube or they choose to do nothing about it. In other

cases, the copyright owner(s) will send a DMCA takedown notice to YouTube and have the video taken down. Further still, someone who posts an unauthorized cover might get a cease-and-desist letter or the threat of legal action, and might actually get sued, leading to liability for a lot of money in copyright infringement damages. Another practice increasing in popularity allows copyright owners to claim rights to their works used in the infringing video(s) through YouTube's content management system.

This practice allows the video to remain online and pays the copyright owners or administrators a share of the advertising revenue generated by the infringing videos. Which action to take is still at the discretion of the copyright owner(s) and each of these owners will have their own internal protocols to handle infringements.

*Erin M. Jacobson is a practicing music attorney, experienced deal negotiator, and seasoned advisor of intellectual property rights. She protects clients ranging from Grammy and Emmy Award winners to independent artists, music publishers, record labels, and production companies. For more information or to contact Ms. Jacobson, visit [www.themusicindustrylawyer.com](http://www.themusicindustrylawyer.com). © 2016 - Reprinted with Permission.*

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## **NMPA and YouTube Reach Agreement to Distribute Unclaimed Royalties**

### **NMPA Press Release**

**Washington, D.C.** – The National Music Publishers' Association (NMPA), on behalf of music publishers and songwriters, and YouTube have negotiated an agreement to distribute royalties for musical works used in videos on YouTube where ownership was previously unknown. As a result, millions of dollars in previously unclaimed non-performance royalties will be paid to publishers and songwriters, starting in 2017.

The agreement addresses the challenges around identifying ownership of musical works, and it will help solve the problem of attribution so that music publishers and songwriters can not only be paid for works viewed on YouTube in the past where ownership was previously unknown, but also be paid for those identified works moving forward.

“We appreciate YouTube’s willingness to work with us on behalf of the industry to help pay out millions of dollars in previously unclaimed royalties to publishers and songwriters,” **NMPA President and CEO David Israelite** said regarding the agreement. “It is essential that we work with digital services like YouTube – the most popular digital platform for music discovery – to fix the challenge of incomplete ownership information to ensure royalties are no longer unmatched and music owners are paid accurately by the platforms that rely on their work.”

“The revenue earned by the music industry on YouTube continues to grow significantly year over year, and we’re committed to making sure that publishers are paid for the usage of their works on our platform,” said **Tamara Hrivnak, Head of Music Partnerships, Americas for YouTube and Google Play**. “We are excited to partner with the NMPA to address the industry-wide challenges associated with identifying publishing ownership on digital platforms.”

### **Agreement Summary:**

- Music publishers will have the ability to opt into this agreement during the opt-in period, which opens on December 12, 2016 and will remain open through February 28, 2017.
- Following the opt-in period, YouTube will provide participating publishers with a list of songs YouTube may have been unable to obtain proper ownership information for. This will allow participating publishers to claim ownership in those songs and receive accrued royalties from the period between August 1, 2012 through December 31, 2015.
- The claiming window will be 3 months long. After the claiming window, participating publishers will receive claimed accrued royalties.

- Any accrued royalties that remain unclaimed will be distributed to participating publishers based on each publisher's market share and on revenue paid for known usage on YouTube during the initial accrual period. The agreement, however, will not affect the rights of any publisher or songwriter who does not choose to participate.
- This process will be repeated for future twelve-month usage periods beginning on January 1, 2016 and ending on December 31, 2019.

*About the NMPA: Founded in 1917, the National Music Publishers' Association (NMPA) is the trade association representing all American music publishers and their songwriting partners. The NMPA's mandate is to protect and advance the interests of music publishers and songwriters in matters relating to the domestic and global protection of music copyrights. Learn more at [www.nmpa.org](http://www.nmpa.org).*

*About YouTube:*

*Launched in May 2005, YouTube allows billions of people to discover, watch and share originally-created videos. YouTube provides a forum for people to connect, inform, and inspire others across the globe and acts as a distribution platform for original content creators and advertisers large and small. YouTube is a Google company.*

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## PANELIST BIOS

### **Erin M. Jacobson, ESQ.**

Erin M. Jacobson, Esq. ([www.themusicindustrylawyer.com](http://www.themusicindustrylawyer.com)) is an experienced deal negotiator and a seasoned advisor of intellectual property rights who protects musicians, songwriters, music publishers, record labels, and a wide variety of other music and entertainment professionals. Ms. Jacobson's clients include Grammy and Emmy Award winners, legacy artists, and independent artists and companies. Ms. Jacobson regularly handles all types of agreements within the music industry, with an emphasis on music publishing and licensing.

She is a frequent author and speaker, and has been featured in publications including Forbes and Music Connection. She also is on the Board of Directors for both the California Copyright Conference (CCC) and the Association of Independent Music Publishers (AIMP).

Outside of her law practice, Ms. Jacobson also owns and operates Indie Artist Resource ([www.indieartistresource.com](http://www.indieartistresource.com)), the independent musician's resource for legal and business protection.

### **Rene Merideth**

Rene Merideth is the co-founder and COO of Exploration, a business class search and comprehensive YouTube CMS management company. She is also a consultant for several other small songwriters, publishers and new media companies around the globe. Prior, she was the VP of Operations at AdShare.tv, Director of Licensing/Head of West Coast Licensing for BMG Chrysalis and Bug Music, and Manager, Mechanical Licensing for Windswept Holdings.

Rene started her career in the country churches of Southern Missouri as a roadie for her Grandfather's gospel music band. She worked with various acts of all genres in the St. Louis area until she headed off to college receiving a BA in Music Business from Belmont University in Nashville. While working across many aspects of the industry, she found her niche in artist management and music publishing.

Moving to Los Angeles, she started with Windswept Publishing and survived two high profile mergers to become Head of West Coast licensing for BMG. Over the years, she has worked on music by artists including Alison Krauss, Vince Gill, Kings Of Leon, KISS, Bruno Mars, Beyonce, Eminem, Pink and Pete Townshend among others.

In 2012, she founded her consulting firm, Red Dragon Management, with the goal of educating artists/songwriters and helping the little guys have a voice in the industry.

Rene received Certified status from YouTube in 2013. Additionally, she is a member of NARAS, ASCAP, AIMP, and the California Copyright Conference.

## **Mark Kovinsky, ESQ.**

Prior to establishing his own law firm in 2010, Mark Kovinsky practiced law for 15 years with the Los Angeles entertainment boutique law firm of Kleinberg Lopez Lange Cuddy & Klein, LLP. Prior to joining that firm in 1995, Mark was an associate attorney at Mitchell, Silberberg & Knupp (MSK) in the music division from 1991 to 1995. Mark started his career in 1990 in the business litigation division of MSK.

Mark's practice focuses on the negotiation of intellectual property contracts, with an emphasis on entertainment transactions in the recorded music, music publishing, and live concert industries. In recent years, his practice has included an increased focus on sponsorship, endorsement, branded content, brand management, and trademark license agreements across a wide spectrum of industries (e.g., spirits, clothing, telecommunications, and fragrances). Mark's clients have included Grammy winning recording artists, songwriters, and record producers in the pop, urban, rock, jazz and Latin genres, as well as personal managers, music business executives, record companies, music publishers, and other individuals and companies that finance, produce, distribute, advertise, and sell music. Mark has also represented Fortune 500 companies that utilize music in their product lines and advertising campaigns.

Mark graduated with high distinction from the University of Michigan in 1987, with a degree in economics. He received his law degree from The UCLA School of Law in 1990 and has been an active member of the State Bar of California since 1990.

For a complete bio and contact information, go to [linkedin.com/in/markkovinsky](https://www.linkedin.com/in/markkovinsky).

## **David Abdo, Disney Music Group**

### **Senior Vice President, Global Business Operations and Distribution**

A 16-year Disney Music Group veteran, David Abdo currently oversees all of DMG's distribution and operations, including domestic and global distribution strategy as well as sales, digital, licensing, production, finance, royalties, technology, facilities and managing general business operations across the lifecycle of Disney's music in the global marketplace.

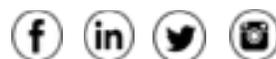
On the front lines of the digital music revolution since 2000, David began his career in the then-brand-new digital marketing group at Hollywood Records, later spearheading the expansion into digital distribution. In 2005 he led the push to combine physical and digital distribution operations, making DMG one of the first companies to do so. He has also driven efforts to reduce the labels' environmental footprint.

As a leader who champions learning and the sharing of knowledge, David combines a great depth of experience with a fresh perspective, continuing to streamline and improve DMG's business amid the changing music landscape.

A graduate of USC's business school and a Los Angeles native, David enjoys music, skiing, movies, golf, photography, astronomy, technology and spending time with his wife and three young children.

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for more information and upcoming events, visit [theccc.org](http://theccc.org) or follow us!



**SAVE THE DATE:** The Next CCC Dinner is **Tuesday, February 7th** at the Sportsmen's Lodge Event Center

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