



NEWSLETTER

An Entertainment Industry Organization

SHOULD YOU SIGN WITH A NON-EXCLUSIVE RETITLED LIBRARY?

By Ron Mendelsohn

(excerpt from an article originally published in *The Score*, Fall 2010)

The President's Corner Shawn LeMone

This month we are pleased to host a discussion on the evolving technologies of digital audio recognition and how these technologies will enhance the ability of Performing Rights Organizations (PROs) and others to detect, identify and monetize performances of music. All three PRO's have been active in evaluating different applications of both fingerprinting and watermarking technologies. ASCAP was the first to implement its own fingerprinting technology through MediaGuide. MediaGuide was founded in October 2002 by ASCAP and the Connexus Corporation and has been used as the basis for ASCAP's radio distributions. Other technology companies are now also active in this space including LandMark, SoundMouse, TuneSat and many others.

In this evening's discussion, we will focus on how such technologies are evolving and how they might be used to detect performances of music in audio-visual media such as television and the Internet. The primary challenge in audio-visual is identifying music through voice over or sound effects, often referred to as "dirty audio". While fingerprinting technologies have demonstrated the ability to identify music through "dirty audio", there are still questions as to the level of accuracy. There is a tendency to produce "false positives" the more open the parameters are set to identify music through "dirty audio". More restrictive parameters reduce the problem but also reduce detections. There are additional challenges which will be discussed by the panel.

It is possible that a multitude of different technological approaches will ultimately be embraced. Because of the inherent limitations in each, it is probable that PRO's will eventually employ a "multi blade razor" including fingerprinting, watermarking and digital cue sheets supplied in the RapidCue standard format. RapidCue is a joint venture by ASCAP and BMI that has allowed for a single industry standard for digital cue sheets. These cue sheets are being supplied through uses of both the RapidCue web application and SoundMouse.

One could conceive of a merger of these technologies wherein RapidCue cue sheets are automatically generated by fingerprinting or watermarking technologies. Whatever happens, one can be assured that technological advances will produce an environment that allows PRO's to accurately track music performances and distribute royalties to composers and publishers with an amazing degree of accuracy. Stay tuned!

Many composers and songwriters are lately being offered what seems like a deal too good to pass up: get film/TV placements of their music and a share of sync fees from non-exclusive distributors while retaining 100% of their copyrights. While this may appear to be an irresistible bargain on the surface, it is essential that writers fully understand the ramifications of this business model in order to make an informed decision.

What Is Non-Exclusive Retitling?

First, let's clarify what is meant by the term "retitled libraries". This term does not refer to libraries that exclusively own the rights to their works and for whatever reason decide to re-release the works under alternate titles; it is a library's prerogative to re-release or repurpose tracks in such a manner. Rather, for the purposes of this article, this term shall refer to libraries that engage in the practice of retitling tracks *without obtaining exclusive rights to the works*. For these libraries, retitling is simply a way to market and license non-exclusive content and collect performance revenues by registering existing works under different titles.

UPCOMING EVENTS

December 7, 2010 - CCC Holiday Party at Cafe Cordiale

January 11, 2010 - Film and Television Program

February 8, 2011 - Music En Espanol - Current and future opportunities in the Latin Music Market

How Does It Work?

Retitled libraries solicit content from composers or songwriters promising that they will “retain ownership” in the works and simply license their tracks on a “non-exclusive” basis. They offer to retitle the works and share publishing revenue generated from *their* placements of the retitled tracks. (There is generally no upfront cost involved for the writer, although a few retitled libraries have been known to retain all or part of the writers share of performance royalties- a definite “red flag”). This sort of arrangement can obviously be appealing to a writer who might have dozens of songs, scores, demos and other unused musical material just “sitting on the shelf” gathering dust. Why not monetize these tracks to generate some extra revenue? For that matter, why not sign *the same tracks* with as many retitling services as possible to maximize income? Before signing away your tracks, let’s delve a little deeper and explore some of the repercussions of these deals.

Identical Fingerprints

It is widely accepted in the music community that fingerprinting (a method of audio recognition by which a computer program identifies an audio track by matching its profile against an existing database), in one form or another, holds the key to performance monitoring in the years ahead. ASCAP, BMI and SESAC have already launched fingerprinting initiatives (MediaGuide, Landmark and Tunesat, respectively), and a more extensive rollout of these technologies is planned in the near future. Since every piece of audio contains a unique “fingerprint”, the day will soon come when digital algorithms will automatically detect each piece of music and (ideally) every performance will be tracked and paid- without the hassle of cue sheets or the burden of physically watermarking every track. Most libraries consider fingerprinting to be a critical step towards improving the fairness and accuracy of PRO distributions. In addition to performance tracking, fingerprinting systems are also being increasingly used by libraries to monitor sync uses of their catalog and by broadcasters to automatically generate cue sheets.

All of these scenarios present an obvious conundrum for retitled music companies: since their audio files are not unique, each detection can no longer be linked to a unique title record, making accurate performance identification virtually impossible. Clearly, the practice of retitling only serves to stymie these important initiatives and therefore runs counter to the best interests of the industry.

Legal Challenges Loom

It is only a matter of time before legal challenges arise from these practices. Whose title of a song was ultimately used in a film or TV show if multiple versions were pitched? Which title and which master are being referenced in a composer contract? Is anyone vetting these tracks for rights clearances or potential infringement issues? Do these companies even have the legal right to license these tracks, considering that copyrights are based not on title (titles are not copyrightable) but on the underlying composition and sound recording? How many non-exclusive catalogs have unwittingly entered into exclusive overseas sub publishing deals? Only time will tell how these issues will play out on the legal front.

A Song Is Still A Song

In conclusion, the practice of retitling does not pose a problem if the same entity, or combination of entities, controls the rights to all title variations of the same track; however it is very much a problem when multiple entities lay claim to the same work non-exclusively based solely on title permutations.

Amidst all the technological change and upheaval buffeting the music industry over the past several years, some things still haven’t changed: a song is still a song and should not have multiple aliases depending on the situation or “who got the placement.” Clearly, the best strategy for composers and songwriters is to take the time to craft original, high quality music and develop a solid relationship with a reputable library that can represent their tracks *exclusively* and invest the necessary time and resources to properly tag, organize, promote and pitch their tracks. Integrity still counts, especially in the digital age.

Ron Mendelsohn is President and CEO of Megatrax and a founding member of the PMA

A Non-exclusive Point of View

by Vaughn Johnson

(excerpt from an article originally published in *Film Music Magazine*, July 14, 2010)

I am a composer by trade with a great deal of experience selling all rights to my music as a hired hand for television production. When I became involved in the music library business, I set out to provide a different experience for composers by offering them an opportunity to retain ownership of their work. I wondered if, as a publisher, there would be a way to collect royalties *only* for those broadcast performances that are the result of my company's placements. I discussed these issues with a representative from BMI when I started this venture. He suggested that we retitle the tracks as that would be the simplest solution to properly allocate publishing royalties per our agreement.

I have read the criticism swirling around the Internet regarding non-exclusive libraries and the practice of retitling, and feel motivated to raise my voice with others who view the non-exclusive model as a viable alternative. It is worth noting that my business deals with providing instrumental underscore for television programming, rather than the world of advertising, promos, etc. where individual songs compete for placement.

Performances not tracked by fingerprinting/sound recognition technology

Recently, a music library that uses TuneSat recognition technology claimed that a track credited to me on cue sheet was actually theirs. After reviewing the track itself, it was clear to all parties that the cue sheet was correct and the track was mine. Here's what caused the trouble:

Both my track and the track from the other library used the same drum loop, with different overdubs. I had added timpani, while the other composer had added guitar. I contacted TuneSat to inquire as to how my track could have been mistaken for the one it fingerprinted. TuneSat's response was that the track they had in its database was the *closest* match to the track that was broadcast (mine). Closest? Doesn't sound like a fingerprint match to me. TuneSat acknowledged that improvements to their technology are necessary to account for different compositions that use the same commercially available loops and sounds, as well as compositions that have been retitled. It is evident that until this technology is perfected, we can anticipate inaccurate results. Perhaps the ultimate solution in sound recognition technology will be one that can account for both the use of drum loops and retitling.

Multiple claims of ownership/legal disputes and ethical issues

With our business model, only one party owns the music: the composer. He/she has given our company non-exclusive control, the authority to retitle, and the right to collect publishing royalties generated from our placements. Non-exclusive library administrators understand that the cue sheet indicates which title was actually used in the broadcast and therefore which party is entitled to collect publishing royalties. Opponents of retitling are making this practice out to be some sort of back-room deception. It has been my experience that retitling affords complete accuracy in administering non-exclusive deals by providing the simplest way to satisfy the terms of the agreement.

Conclusion

In conclusion, we all want to write some cool tunes and make some money while we're at it. In the music-licensing world, the past few years have proven that you don't have to be affiliated with a traditional production music library to make a buck. Is it a market-share-scare that would cause some of these exclusives to ban together to cast aspersion on a different business model? Surely there is room for more than one way to represent a composer's catalogue. The important issue for me is the composer's ability to maintain rights to his/her hard work.

Perhaps an alternative to retitling will emerge, one that may require more complicated administration, but still offers non-exclusive representation. It's been my experience that music for picture has many lives and many uses. A well-structured non-exclusive deal affords the owners of those useful compositions many opportunities for income, and at the same time leaves open the possibility of selling their works exclusively should the right deal come along.

Vaughn Johnson is a composer and President of music library ScoreKeepers Music

SESAC and Digital Audio Recognition Technology

SESAC is proud of its place in pioneering the use of digital audio-recognition technology in the field of performing rights. In 1994, we contracted with Broadcast Data Systems (BDS) to use their proprietary fingerprint technology to monitor Spanish language radio stations for our new SESAC Latina division. This made SESAC the first PRO to fully integrate a pattern-recognition solution to survey radio performances and render royalty payments. The technology worked so well that in 1996 we expanded our license with BDS to include more than 1,000 radio stations in other formats such as Country, Pop, Rock, Oldies, and Urban. This expansion allowed SESAC to capture more than 8 million hours of radio airplay across approximately 130 markets making its radio survey the most extensive of any U. S. PRO.

In 1998, SESAC began working with Aris, which later became Verance Corporation, the pre-eminent company for watermarking music at the time. Unlike the fingerprinting technology provided by BDS, the watermarking technology provided by Verance was able to detect music that was buried beneath voice-overs and sound effects (i.e., 'dirty' audio). In addition, Verance deployed a broad monitoring network capable of reaching national and local television channels in the top 100 local markets. This enabled SESAC to capture performances of music on television that had previously been unreported or under-reported on music cue sheets, particularly background music in television programs as well as music in program promos. Verance eventually became widely adopted by music libraries and production music houses as a way to monitor these under-reported uses. SESAC was the only PRO to pay royalties on these uses until 2006 when Verance decided to discontinue its broadcast monitoring operations.

Earlier this decade, SESAC further expanded its coverage of the radio market through the use of the fingerprint technologies provided by BDS and Audible Magic. By 2003, coverage was extended to formats such as Americana, Contemporary Christian, Gospel, College, Jazz, and Smooth Jazz to name a few. Eventually Southern Gospel, New Age, and Blue Grass would be covered as well. Today SESAC (through BDS) monitors over 1,600 radio stations and more than 10 million hours of radio airplay per year, and remains the only U. S. PRO to base its radio survey exclusively on fingerprint technology. Doing so helps SESAC maintain an accelerated payment schedule (90 days after the close of a performance period) and provide more transparent reporting to its affiliates (insofar as the BDS detection data can be verified independently).

This year we entered into a strategic partnership with TuneSat, the leading fingerprint technology for tracking 'dirty' audio. TuneSat is the first of its kind in the U.S. to commercially provide 24/7 detection data captured over a monitoring network of more than 100 TV channels. TuneSat's field-proven technology is expected to greatly benefit SESAC's affiliated songwriters, composers, and music publishers by enhancing our ability to capture performances that are often misreported due to late, missing, or erroneous cue sheets. When fully integrated, the TuneSat detection data will help ensure the timeliness and accuracy of payments by supplementing and streamlining SESAC's system for processing television performances.

Today, we see the value that both fingerprinting and watermarking have for the future of our business. Fingerprinting is extremely valuable for its passive qualities, which enable users to track a piece of music without embedding data into the original audio file prior to delivery. Any piece of music, no matter how old or new, can be fingerprinted from a copy of the original master (as long as source-file integrity has been maintained) and tracked on a going forward basis. Watermarking, on the other hand, enables users to embed specific information about a piece of music, or even about the end user of that music. This provides tremendous benefits for discerning entitlement changes on different uses of the same piece of music (i.e., in lieu of re-titling), or for forensically tracing the source of unauthorized file sharing. SESAC is dedicated to using the best of both types of technology to improve its licensing and royalty operations, increase accuracy in royalty accounting, and enhance the value of its services to its affiliates.

Panelist Biographies

Adam Taylor, President APM Music

For over two decades, Adam Taylor has been helping intellectual property companies manage and extract value from their copyrights, trademarks and patents. As president of APM Music, Adam continues to reinforce the company's standing as one of the largest and most diverse collections of original production music by adding the latest urban-contemporary and hard-hitting indie rock to the APM catalog through new libraries and exclusive recordings.

Prior to APM Music, Adam was president of Taylor/Fox Enterprises, marketing patent-protected inventions; founding partner of Goldman/Taylor Entertainment, developing numerous television properties; and President and CEO at Caswell-Massey.

APM Music, a joint venture of EMI Music Publishing and Universal Music Publishing, is the most diverse, innovative and largest production music library and music services company with 35 libraries of more than 300,000 tracks featuring every musical genre. With the MyAPM online search engine, along with complimentary music searches and unsurpassed customer service, APM Music gives entertainment and media producers exclusive access to the best, high-quality and original recordings by legendary composers, top session players and today's revolutionary trendsetters, all produced specifically for use in film, television, advertising, games and new media productions.

Lynne Lummel, Sr. VP of Distribution and Repertory ASCAP

Lynne Y. Lummel, ASCAP Senior Vice President of Distribution and Repertory, is responsible for processing hundreds of millions of musical performances every year including TV, radio, satellite radio, Internet, background music, digital jukebox, live concerts, theme parks, circuses and ice shows. Since joining ASCAP in 1988, she has also worked with ASCAP's Licensing, Legal and Human Resources Departments. Papers on her work at ASCAP have been published in the *Journal of High Performance Teams* and *Reward and Recognition for Teams* (Jossey-Bass) and presented at industry conferences. Prior to joining ASCAP, Lynne was a management consultant with American Express, Metro-North Commuter Railroad, and ADP in the areas of management development, project management and performance management. She has a doctoral degree from Columbia University, a master's degree from the University of Florida and a bachelor's degree from Florida State.

Darren Briggs, Vice President & Chief Technology Officer Landmark Digital

Darren Briggs is the Vice President & Chief Technology Officer of Landmark Digital Services, BMI's advanced technology subsidiary. Darren leads Landmark's Development, Infrastructure and Operations departments, and is responsible for creating the business processes, systems and operational structures that support Landmark's audio recognition technology. He also directs the deployment and implementation of the company's nationwide music monitoring network utilizing BlueArrow technology, a cornerstone for many of Landmark's initiatives and endeavors.

Briggs was formerly the Senior Director of BMI's Department of Strategic Development, where he was responsible for investigating and projecting new technology trends in the music industry. He founded fatbubble, a technology company, in San Francisco in 2000 and previously worked for 12 years at music publishers Tree, Sony and Sony/ATV UK as Director of Global Systems Development. Darren has also authored several patents relating to social networking, audio recognition and audio monitoring.

Landmark Digital Services is a wholly owned subsidiary of performing rights leader, BMI and offers audio recognition solutions for content providers, copyright owners and consumers of music and digital entertainment. Landmark's intelligent audio recognition technology acquired from UK-based Shazam Entertainment, Ltd, uses fingerprinting technology to identify performances from any audio source including radio, television and the Internet.

**Mark Vermaat, Head of Business Development
Soundmouse Ltd.**

Mark joined Soundmouse in October 2008 and took on the responsibility of Business Development. In this position he is responsible for Soundmouse's sales activities and client and product development. He also establishes and maintains relationships with content owners and other stakeholders.

Prior to joining Soundmouse, Mark was in charge of Endemol International's music publishing activities as Head of Music at Endemol International in London and Hilversum, The Netherlands.

Soundmouse is a music cue sheet platform that has become the *de facto* industry standard since its launch in 2001. Soundmouse is used by over 450 Networks worldwide to create, manage, distribute and report cue sheets to Performing Rights Organizations.

Soundmouse has integrated its groundbreaking music recognition technology into its music cue sheet solution. This technology was engineered specifically to address the complex task of automated recognition of music in difficult audio environments such as music buried within television broadcasts. We can accurately recognize very short durations of music in distorted environments where layers of additional sound such as voiceover, atmosphere and effects are mixed in with the music.

**Steve Winogradsky - Moderator
Partner, Winogradsky/Sobel**

With thirty years experience as an attorney in the music industry, Steven Winogradsky is a partner in Winogradsky/Sobel in Studio City, California, providing global media and music business affairs & legal support for composers, songwriters, music publishers, recording artists and television, film, video and multi-media producers. In addition to an entertainment law practice, the company handles music clearance and licensing in all media for many production companies, worldwide administration of the publishing catalogs for a number of clients and New Media strategies and Revenue Modeling.

Prior to being in solo practice with The Winogradsky Company from 1992 to 2009, Mr. Winogradsky had served as Director of Music Business Affairs for Hanna-Barbera Productions, Inc., Managing Director of Music, Legal & Business Affairs for MCA Home Entertainment and Director of Music Licensing and Administration for Universal Pictures and Universal Television

He was twice elected President of the California Copyright Conference, after spending nine years on the Board of Directors, served for four years as President of The Association of Independent Music Publishers and was named as one of the Outstanding Instructors in Entertainment Studies and Performing Arts at UCLA Extension, where has taught since 1997. He has written numerous magazine articles on the subject of music for motion pictures and television and lectured on a variety of music-related topics at various symposia.