



## **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 CD Solutions, Inc. 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 CD Solutions, Inc. This is true even if you are not aware that you have infringed on someone else's rights. Keep in mind that 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 CD Solutions, Inc. through an Intellectual Property Rights form available from CD Solutions, Inc. You must also provide CD Solutions, Inc. 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 CD Solutions).
- 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 information, 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 CD Solutions' satisfaction that appropriate licensing has been granted to the individual or organization that has procured the CD or DVD replication order. CD Solutions 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:

- A license for the recorded track from the artist.
- A 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. CD Solutions would require a copy of this email. 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 and that document should be submitted to CD Solutions with the corresponding replication order. 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. CD Solutions would require a copy of such email for the corresponding replication order.

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. Prior approval from the music publisher is not required, but proof of license registration with agencies like Harry Fox is required. In these cases, the agency license document should be submitted to CD Solutions. 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 are required from the recorded track IPR owner and 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. This documentation should be submitted to CD Solutions with the corresponding replication order.

**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 need to be provided. 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 must be provided from the IPR owner of the recorded track

- a Synchronization license must be provided from the music publisher.

For karaoke discs, a Synchronization license may be required from the music publisher for each song that is recorded and lyrics are displayed.

#### **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 CD Solutions need?**

With every new order, CD Solutions must have proof that each customer possesses the rights to replicate the contents of all CD and DVD orders. CD Solutions can provide the customer with an Intellectual Property Rights form. This form was developed by the International Recording Media Association (IRMA) on behalf of their Anti-Piracy Compliance program. 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, CD Solutions retains the right to require additional information in order to verify, in CD Solutions’ 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, published music, software and video assets. CD Solutions 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 CD Solutions 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 the CD Solutions requires to process 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 or karaoke disc.
- Legal proof that an asset is considered to be in the Public Domain.

If you are not the IPR owner, CD Solutions 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.cds.com> on the forms page.

Again, the items listed above are minimum requirements that must be met in order for CD Solutions to process your order. CD Solutions reserves the right to request any additional information it feels appropriate in order to confirm that all required intellectual property rights are present. CD Solutions also reserves the right to accept or reject any orders it receives, in its sole discretion.