



April 27, 2010

Bulletin# 7174 JPC

As a reminder to advertiser and agency signatories to the American Federation of Musicians Commercial Announcements Agreement, the following advisory, originally published in 1999, is being re-issued.

MUSIC PRODUCED UNDER OTHER AFofM AGREEMENTS AND USED IN COMMERCIALS

Various AFofM agreements require that payments be made for music tracks or filmed/videotaped performances produced under those agreements and subsequently used in other media or venues -- for example, music tracks produced under the Sound Recording Labor Agreement (formerly known as the Phonograph Record Labor Agreement) or the Theatrical and Television Motion Picture Agreements which are subsequently used in commercials.

Employers under those agreements, such as the record companies or film studios, are under the obligation to ensure that appropriate payments are made for such use and may include language in their license agreements (e.g., the master recording license) which transfers that responsibility to the licensee ---the advertiser in the case of commercial use.

In the event that an advertiser or its' agency obtains a master recording license for a piece of music which will be used in a commercial, and the license transfers responsibility to the advertiser for any subsequent commercial use payments, the advertiser and/or agency should contact the AFofM, first, to verify that AFofM records show that the music was, in fact, recorded under an AFofM agreement, and secondly, to obtain the performer information from the original contract in order to make proper payment.

Advertisers may also choose not to accept transfer of this responsibility and may try to negotiate their licenses accordingly. In all cases, advertisers and agencies are advised to seek expert legal counsel when negotiating these agreements.

MUSIC PRODUCED FOR COMMERCIALS AND USED IN ANOTHER MEDIUM

The language in the AFofM Commercial Announcements Agreement – Article IV Transfer of Rights - requires that employers who have produced music tracks and/or filmed or taped performances of musicians under the commercials agreement

must obtain prior written permission from the AFofM before granting any other party the right to use that material for any purpose not permitted under the commercials agreement. This would include, for example, an advertiser or agency granting a filmmaker the right to include a commercial music track in a movie.

The provision specifies, however, two situations in which this permission is automatically granted:

1. The employer must require that the buyer or licensee become responsible for session, use/re-use payments and pension contributions that are required under the AFofM agreement which covers the new medium.

For example, use in a movie would require that the musicians in the commercial music track be paid the appropriate fees specified in the AFofM Theatrical Motion Picture Agreement. In addition, the employer must provide the AFofM with evidence of, or an extract of, the document by which the buyer or licensee has agreed to make those payments.

or

2. The employer agrees in writing to make the payments as outlined in the above paragraph.