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Intellectual Property Alert

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Embedding videos with music? You may need a sync license

By Staci Jennifer Trager and Vincent C. Capati

Overlaying sound onto promotional videos, or reposting content already embedded with sound, requires certain licenses and permissions *even if* those soundbites came from Instagram's song library.



What's the Impact

- / The types of licenses and permissions required depends on how you use a copyright holder's recordings.
- / Obtaining a mechanical (compulsory) license is not necessarily enough.

On February 16, 2023, Associated Production Music LLC (APM) filed suit against Major League Soccer and various of its soccer clubs (collectively, defendants) for copyright infringement.ⁱ

According to APM, the defendants launched social media campaigns on Twitter, Facebook, Instagram, Snapchat, Video sharing platform, and TikTok to engage fans and increase viewership. *Id.* at ¶ 22. Defendants did so by creating videos and "synchronizing" them with APM's records. *Id.* Tunesat, an audio recognition third-party vendor, then alerted APM that they were using APM's records. *Id.* at ¶ 24. APM then contacted the defendants to confirm whether

such uses of APM's records were licensed. *Id.* They were not. *Id.* at ¶ 25. APM now filed suit alleging direct, contributory, and vicarious copyright infringement.

What is a sync license, and how do I get one?

Separate from statutory exemptions under 17 U.S.C. § 110 to copyright liability, a party must seek permission from copyright holders to use their records. And there are several types of music licenses including, but not limited to, mechanical (compulsory) licenses, master use licenses, and sync licenses.

The license at issue in the litigation brought by APM is the sync license. A sync license allows a user to synchronize recordings with visual work, such as commercials, films, television shows, and other videos. To obtain a sync license, the user must directly negotiate with the copyright holder, typically the artist's publisher. And depending on how the recordings will be used, the user may need to obtain additional licenses. For example, overlaying someone's voice may require you to obtain name, image, and likeness releases, and displaying lyrical prompts and captions may require reprint licenses. This is fact dependent.

Takeaway

Prior to overlaying videos with recordings—including music, voiceovers, and other sounds—on Snapchat, TikTok, Facebook or Instagram, as well as on your own website or other video sharing platform, you must make sure you have all the required licenses and permissions even if you obtained the music from one of the social media companies themselves as commonly offered through their song libraries. The same is true if you repost content made by others on your channels and sites. And be wary about viral challenges, duets, and other promoted or trending memes.

As always, Nixon Peabody LLP can provide practical considerations to publishers and brands when navigating intellectual property rights and authorized commercial activities.

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ⁱ See *Associated Production Music v. Major League Soccer, et al.*, Case No. 2:23-cv-01173 (C.D. Cal), ECF No. 1.