



# Intellectual Property Licensing for Media Replication and Frequently Asked Questions About Securing Mechanical Licenses

AUDIO-VIDEOGRAPHICS, INC.

**Introduction:** Unauthorized "boot-legging" of music and software costs legitimate artists and content owners billions of dollars a year. Audio-VideoGraphics, Inc. (AVG) follows the guidelines set forth in the International Recording Media Association's (IRMA) Anti-Piracy Compliance Program. This program allows us to be in complete compliance with applicable copyright law protecting the rights of legitimate intellectual property rights holders. Because of the Internet and other technological developments, there are many 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 for AVG to assure that proper permissions have been secured for any CD, VHS or DVD replication order. Failure to properly license intellectual property used in a replication order can result in severe legal damages against you and any other party involved in manufacturing your product. It is critical that you understand **you are responsible** to secure all the applicable intellectual property rights related to your project.

**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. That includes rights to software products, recorded audio tracks or samples of those tracks, published music, including covering songs by other artists, and motion picture assets not in the public domain, owned by a person or an organization. If you wish to utilize any of these assets as a part of your project, and you are not the IPR owner, you must secure the rights to do so through a license from the IPR owner. Common situations where IPR issues may occur include:

- Covering songs that have been written or performed by other artists
- Sampling music performed by other artists. The duration of the sample does not affect the need to secure IPR.
- Using unsecured music as part of a video presentation, such as music under a voice over narrative.
- Including functional software applications on a CD-ROM disc (such as Adobe Acrobat Reader or Apple Quick Time).

If you are the actual IPR owner, you must state this in writing to AVG by completing an IPR form which will be supplied by AVG. You must also provide AVG with all the necessary documentation to evidence your rights ownership.

**What Proof Does AVG Need?** A license can take the form of: 1) a formal letter from the IPR owner on their letterhead indicating the specific use granted for their property. The letter should include the name of the property, who the permission is granted to, for which project and for what length of time or number of copies the permission covers. 2) A formal document of registration from an organization that serves as a licensing clearinghouse; or 3) A copy of a contract or formal agreement that exists between the user of the property and the owner of the property.

**How Do I Find the IPR Owner?** Software products, recorded audio tracks, published music and motion picture assets may all require license for use. Determining whether a license is needed may require performing research with licensing clearinghouses, Internet search information, copyright searches or an agency that specializes in this activity. AVG reserves the right to require verification to our satisfaction that any project submitted for replication has satisfied all licensing requirements, and that all documentation provided for IPR's is valid.

**Using Software:** The licensing requirements 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 the software on your computer. Some "freeware" programs (such as Adobe Acrobat Reader) still require distribution licensing even though they are free. Many freeware or shareware programs allow you to register for a distribution license of their products on the Internet.

**Using Audio:** Recorded audio tracks may require two different types of licensing: 1) License for the recorded track from the artist; and/or 2) 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 CD, VHS or DVD order.

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. CD projects that are "music compilations" are particularly investigated for the proper securing of IPR from all artists or organizations included in the project.

**"Cover Songs":** Use of a published song on an audio recording requires a per copy fee to be paid to the music publisher. These fees are commonly known as **MECHANICAL ROYALTIES**. Mechanical royalties can be paid directly to the publisher, or the publisher can establish a relationship with an agency to handle negotiation of royalty payments. The most popular Internet sites to arrange for mechanical royalties are SONGFILE ([www.songfile.com](http://www.songfile.com)) or the Harry Fox Agency ([www.harryfox.com](http://www.harryfox.com)). The cost of a mechanical license is determined by the publisher or agency, and it is common for the agent to establish statutory rates based on the song's age, length, and the number of copies that the licensee wishes to produce.

**What about Sampling?** "Sampling", which is defined as using a portion of a previously recorded audio track as part of the creation of a new audio track, is subject to the same IPR requirements as using the audio track in its entirety, regardless of the brevity or manipulation of the sample.

**What about Production Music Libraries?** Audio utilized from commercial production music libraries also require licensing for replication. Traditionally, a Master Use Agreement will be issued by the music library vendor when the specific usage fees for the chosen music are paid.

**Multimedia CDs and Video/DVD:** Most major motion pictures, television or cable programming will have a registered copyright. When building a multimedia application that involves video and music, music licensing may also need to be provided. Addressing the copyrights of motion pictures or broadcast programming can be very complex and may require specialized legal assistance.

**What is "Public Domain?"** Public domain pertains to creative work that is not protected by law. For this to occur, either copyright protection for the work would not be applicable, or the copyright has expired. Copyright law concerning public domain is complicated, but in very generalized terms, some creative works that are 75 years old or older pass to the realm of public domain. If there is a question as to whether or not your specific selection is part of the public domain, AVG suggests you consult your legal counsel or an agency that specializes in license searches.

**Summary:** IPR issues must be addressed and satisfied before any project work can proceed. All applicable licenses must be submitted at the start of a project; not during or afterwards. With every new order or re-order, AVG reserves the right to request complete documentation that the customer has obtained the rights to replicate the contents of a CD, VHS or DVD. AVG will provide an IPR form to be completed by the customer. If the customer claims to be the IPR owner of the entire program content, AVG retains the right to request additional information in order to verify, at AVG's discretion, the information contained in the form. If the customer is not the IPR owner of the entire contents, then the appropriate additional licensing documentation must be provided. AVG reserves the right to request any additional information it feels appropriate in order to confirm that all IPR claims are legitimate. Additionally, AVG reserves the right to accept or reject any order it receives.

**Where Can I Learn More?** Here is a series of helpful internet links to find more information on IPR, licensing and other copyright issues:

**CD and DVD Industry Policy:**

IRMA Anti-Piracy Compliance program: <http://www.recordingmedia.org/antipiracy.html>

**Software Licensing Information & Related Links**

Microsoft: <http://www.Microsoft.com/permission>

Netscape Navigator: <http://home.netscape.com/partners/distribution>

Apple Quicktime: <http://developer.apple.com/mkt/registering/swl>

Real Player: <http://www.real.com/licensing>

Shockwave & Flash Players: <http://www.macromedia.com/support/shockwave/info/licensing>

Authorware Web Player: <http://www.macromedia.com/support/authorware>

Acadsee (image viewer): requires license - consult end user license agreement

Acrobat Reader: <http://www.adobe.com/products/acrobat/acrrdistribute.html>

Stuffit Expander: <http://www.aladdinsys.com/> -

Eudora (email): requires license - <http://www.macromedia.com/software/homesite/productinfo/eula/>

**Music Licensing:**

US Copyright Office: <http://www.copyright.gov/>

SongFile: <http://www.Songfile.com>

Harry Fox Agency: <http://www.harryfox.com>

All Music: <http://www.Allmusic.com>

American Society For Composers Authors and Publishers: <http://www.ascap.com>

Broadcast Music, Inc.: <http://www.bmi.com>

Music Publishers Association: <http://www.mpa.org>

National Music Publishers Associations: <http://www.nmpa.org>

Record Research: <http://www.Recordresearch.com>

Recording Industry Association of America: <http://www.riaa.org>

SESAC, Inc.: <http://www.SESAC.com>

**Video Licensing:**

Internet Movie Database: <http://us.imdb.com/Find>

Motion Picture Association of America: <http://www.mpaa.org>

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