

Under, Not Under, and Around Music Rights in Community Theatre

liberating the theatre community

Lucinda Lawrence

June, 2018 (plus law updates as of March, 2019)

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Disclaimer: Lucinda Lawrence's work in the U of IL School of Music involved music copyright compliance and protections. While music copyright law is a specialty requiring extensive study, she is not an attorney, but she made it her business to understand how it works. When in doubt, seek legal counsel of an attorney: those specializing in entertainment law likely have a high degree of experience with copyright law for complex concerns.

[Access to Google Slides version of Resource Guide](#)

INTRODUCTION

Did you forget to ask permission to play music in the lobby? Uh-oh: you might get slapped with a big penalty. Or have you ever wanted to add music to a play but were afraid that asking permission might be met with a stiff license fee? Too bad: it might have been free. To be fair, this isn't simple: the "bundle of rights" is difficult to untangle, but you can understand it and use your understanding effectively.

Variables are numerous, and to use music legally ...

- 1) ... in a play, you most likely need permissions of both the composer and playwright, you need a license of the music copyright holder if the music is not in public domain, and *at this time* permission is not needed from the record label when using a U.S. commercial recording for stage dramatic purpose;
- 2) ... changing the music within a musical, you need permissions of the creative team, and you may need additional license;
- 3) ... outside 'curtain to curtain' of a play or musical, you most likely need licensing for performance or playback of music under copyright protection;
- 4) ... to make a recording in any format, you may need license(s), with some exceptions.
- 5) Furthermore, if you need (non-dramatic) performance rights licensing from ASCAP for your theatre, you most likely need it from BMI, and vice versa. (*See also p. 9.*)

It helps to understand when and why you need permissions and licenses.

As a legal concept for property, copyright protection exists (or existed) for most original music regardless of registration status with the U.S. Copyright Office or a © affixed, but copyright is only one piece of the puzzle. Like using the laws of physics in a game of Twister, using knowledge of legal protections helps us navigate what is commonly referred to as an interwoven “bundle of rights,” both economic and moral.

Understanding these protections is essential to using that knowledge effectively, and that insight keeps us from feeling constrained or, being unaware, getting caught making an expensive mistake.

Composers' Rights: Economic and Moral

For purposes of discussion, “composer” here includes lyricists and other writers of original music.

Copyright protections extend for a defined period of years, during which time using music in *any* form is subject to permissions granted by the creative artist and property owner – usually through a representative – and after which time the music falls to public domain and can be used more freely, albeit with limitations. (*See **moral rights of attribution and integrity.***)

<https://copyright.cornell.edu/publicdomain> provides a handy table for Copyright Term in the U.S. – which is acknowledged internationally – showing when works pass to Public Domain

Ownership of copyright for a piece of music can be sold, acquired, and shared. It can be split by percentage among several copyright holders, each a person or other legal entity, and each having **economic rights** exercised through granting permitted uses in exchange for license to do so. By law, no one can *steal* the property, claiming it, but we access and share music so easily in our digital world that it is easy to overlook requirements to **license** our use of music which is not in public domain.

Licensing permits using the music in a specified form, be it print notation, a recording made (audio with or without video), public performance either live or by playback, broadcast or other transmission via a device from one location to another such as for radio, streaming, online post or other distribution – nearly everything other than singing in the shower. There is no tidy one-to-one match of license type to legal right, because music is used repeatedly and for a variety of purposes.

- **license** – a “legal contract that provides the rights to use a piece of music in a specific project. A license is NOT the same as buying a song. A license provides the RIGHTS to use a song in a specific project.” <https://www.musicbed.com/knowledge-base/license/60> (accessed March 7, 2019)
- **public performance** – legally defined as “... at a place open to the public or at any place where a substantial number of persons outside a normal circle of a family and its social acquaintances is gathered...,” and including transmission to the public such as broadcast, internet, and so on
- **transmission** – in this legal context, a “... performance sent by any device or process and received in a different location,” for instance radio, satellite, YouTube post

Several different license types grant permissions to *use* music, each type specific to the way it is USED and NOT BASED ON the ORIGINAL GENRE or purpose of the work; and some uses may require more than one license. While you *could* risk not licensing your uses of music, non-compliance is illegal, it can be *very* expensive, and performances have been shut down for infringement of the law.

Besides that, **what message does that send to our participants, sponsors, and larger communities?**

In addition and related to **economic rights**, creative artists have **moral rights of attribution and integrity**. This recognizes that the art is so fundamentally connected with the artist that it is an extension of who s/he is, in addition to it contributing to the reputation *of* the artist. Regardless who holds the copyright – often a publisher – and regardless licensing fees paid or not, the composer must be acknowledged (or not), as s/he chooses for presentation of the work, and not misrepresented with creative work of another (right of attribution); and no one is allowed to alter creative work without the

creative artist's permission, nor otherwise use it contrary to the artist's intention (right of integrity). Application of that last restriction may be unclear, subject to interpretation.

Note: moral rights apply to playwrights, too!

While **moral rights** for selected visual artists were codified in copyright law Title 17 as of 1990, moral rights exist for composers less clearly, such as relating to economic rights of copyright and to privacy, for instance. As such, these composer rights in the U.S. are limited more so than in European countries, and this legislative and judicial debate continues.

Meanwhile, even after classical music works pass into public domain we generally continue to acknowledge composers for their works and do not change their works outside specific fair use exceptions.

License Types

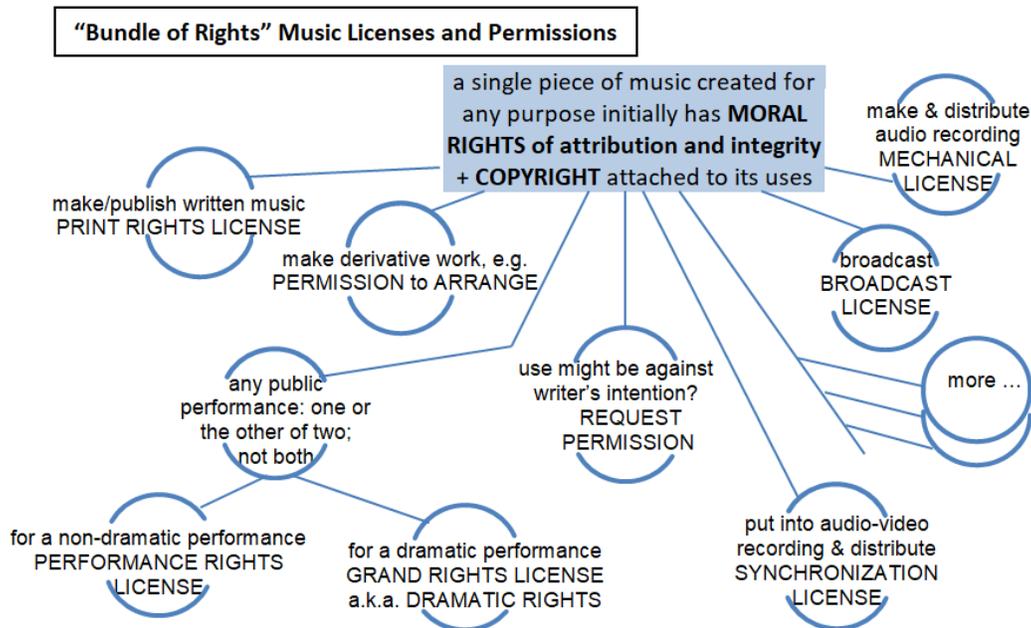
The two music license types used most often for community theatres are **grand rights**, a.k.a. **dramatic rights**, and **performance rights**, each granting permission limited to specific uses of music for either dramatic or non-dramatic purpose. **These two mutually exclusive licenses grant permission limited to uses of music for either dramatic or non-dramatic purposes respectively.**

These two license types also provide perhaps the most confusing aspects of licensing, no thanks to both being for public performances while only one is called 'performance rights'. For any given public performance, use of a particular song/composition is allowed through one or the other of these licenses – for dramatic *or* non-dramatic purpose – **never both licenses simultaneously permitting one performance of the song/composition.**

The choice between grand rights license and performance rights license follows whether it is for dramatic *or* non-dramatic purpose of the particular public performance, and **the choice is made without regard for the original genre** or purpose of the song/composition.

Example Using "On My Own" as part of a production of *Les Miserables* is included in the grand rights license, but if performed in concert without presenting the story, the song requires performance rights license instead.

Further, either of these two licenses, as well as other licenses, can be used alone or in combination with *other* licenses depending upon the project scope.



*See corresponding table below for details of **Selected Types of Music Permissions and Licenses**.*

Each type of license may be granted by representatives of the composer and copyright holder for managing their licenses, and some such businesses specialize in one type of licensing. Further, copyright law protects a community theatre that has been granted permission to use music *as limited by the license*. For instance, ASCAP Performance Rights licensing affords legal protection when using recordings of ASCAP titles for non-dramatic purpose.

Permission to produce a musical theatre work is made through a **grand rights license**, typically including rental of materials. If the proposed performance is permitted, the license is granted for the *entire* work to the producing entity (community theatre group) and is typically managed by a publisher (MTI, TRW, others); the publisher grants permission to perform the script and score as written, nothing less nor further.

When performing music for **non-dramatic use**, such as for pre-show, post-show, and intermission of a stage play, whether live or by playback, permission is granted through **performance rights licensing**. This license is *usually* granted to the venue operator-manager, and licensing is managed by one or more performance rights

organizations (PRO, e.g. BMI, ASCAP, SESAC). If you have only an ASCAP license, for instance, then you are restricted to using music of composers protected by ASCAP, as listed in the ASCAP index.

Performance rights licensing covers only performance of the music, and any added permissions are negotiated other than with the PRO. Additional permissions are required to record the music, distribute recordings, or transmit it (broadcast, online video post, etc.). These permissions are generally not included with grand rights licensing, but *some* may be specifically negotiated and added to the contractual agreement. Myth buster: There is **no 30-second 'rule'** found in written copyright law.

But what if you want to enhance the story in a play or musical by adding some music to the original work? Two types of permissions are needed, possibly a third, and with a current loophole in the bundle of rights, it might be free!

- 1) The author(s) of the work being produced (including playwright and composer) choose or not to grant **permission to alter the work (right of integrity)** – that is usually managed *through* the publisher; and
- 2) if the composer chooses to grant **permission to use the music** for the specific dramatic purpose as above, then there is negotiation opportunity for a **grand rights license**. One usually seeks grand rights for adding music by finding the composer *through a representative* affiliated with a PRO (ASCAP, BMI, SESAC). Other leads are through SoundExchange (digital performance royalties), Global Music Rights (online shares), and other published contacts, e.g. via IMDb. Now since most composers and their agents are unaccustomed to considering grand rights, they very well might grant permission and license *gratis* instead of spending time and money to make a license agreement. In other words, **grand rights might be free for the asking**. Meanwhile, there is **no performance rights license allowable in a circumstance determined to be dramatic use**.
- 3) Music added to a play (with permissions above) as **playback of a commercially distributed U.S. audio recording requires no further permission nor license**. If the added music is either live or playback of a “home-brew” audio recording made specifically for the purpose on stage, without distribution, broadcast or other transmission, then a **mechanical license** *may* not be needed either; but mechanical license might be required to make a *first* recording of music under copyright.

For license requirement to use a **U.S. commercial recording when adding music to a**

play, a clear and concise explanation is presented in an online video with transcript, referenced by permission, ([Feb 5, 2015 “Asked & Answered”](#)) offered by the Law Office of Gordon P. Firemark, specializing in entertainment law: *at present* in the U.S. you do not need to get permission of the **record label** to use a U.S. recording in a dramatic (grand rights) stage performance.

As of June, 2018, Congress was considering potential changes to federal laws which could eventually impact such license requirements. This resulted in recognizing the need for identifying contributing musicians on commercial recordings. Meanwhile, the U.S. has treaties respecting such rights through laws of other countries where the record labels’ recording artists have greater rights than do those in the U.S., so community theatres are legally bound to uphold those rights by international law.

Performance rights license and grand rights license do not provide for distribution of an **audio recording, manufacture of an audio or video recording, broadcast or other transmission, and so on**, each of which would extend the list of licenses needed in a project, each type protecting a legal right of the composer. Think of each added use as another production: you might have the stage production along with an audio recording production, video production, streaming production of the live performance, subsequent distribution of the soundtrack, and so on.

Check your rental contract: some publishers of musical theatre may provide, along with grand rights, additional rights limited to uses for rehearsal and promotional purposes.

Music Permissions and Licenses

use of music, usual grantee, usual grantor-manager of the license, comments, some examples

*More than one license may be required. Some licensing is compulsory while others are not. Some fees are determined by distribution numbers or audience reach. Except as stated, **additional licenses** are required for making a video recording, broadcast of the performance or other transmission of it, or distribution otherwise. **Additional permission** is needed to cut, edit, or arrange the music involved.*

Update: as of June, 2018, Congress was considering potential changes to federal law and subsequently decided to align performance rights licensing requirements for recordings of a specific date range with those of adjacent years.

performance rights license for using live or recorded playback music *other* than for a dramatic purpose – usually granted to a **venue operator-manager** (for instance stage theaters, restaurants, shopping malls, schools, websites, radio stations, phone music-on-hold) through a **performance rights organization** (**PRO**: ASCAP, BMI, SESAC) representing the copyright holder

Note: This is the only right managed by a PRO. Several factors determine the fees rate for a **blanket license** covering your use of all the titles managed by the PRO; alternatively permissions for particular titles or events can be **negotiated individually**, which can be less expensive for low volume use but generally takes more time.

Note: If **renting a theatre facility**, you may negotiate with the operator-manager for who pays for music performance rights licensing; the community theatre pays if owning the theatre facility, and if renting out a CT-owned theatre facility, the lease might specify music performance rights and other licensing. By contract law, a lease denies illegal activities on the premises, whether expressed or not, but since all parties are culpable for non-licensed uses, it is best to verify with the owner and PROs that permission is granted for public performance.

grand rights license (a.k.a. dramatic rights) for using live or recorded music to help convey a story, for instance as incidental music, underscore, dance accompaniment, or song – usually granted directly by the composer or representative publisher (MTI, others), including use in live performance, film, broadcast, and so on

Note: Licensing services, such as Tresóna Music, will seek grand rights license on behalf of their members for a fee, though that usually is managed fairly easily.

Contrary example: A concert including songs from musicals, without staging or dialog and with singers wearing concert attire, falls into **performance rights** licensing.

No double-dipping: while a single song/composition might be used in one circumstance to gain performance rights licensing (non-dramatic), and in another circumstance to gain grand rights licensing (dramatic), the license for a given performance will be **one or the other**, not both, granting permission for *either* a non-dramatic or dramatic performance.

mechanical rights license for using making an audio recording of music (without video) for distribution – usually granted to a record label (recording company) through Harry Fox Agency (HFA) for large quantity, SongFile for small quantity

Note: not required for home-brew recording of music in public domain

synchronization rights license for using recorded music in timed relation with visual images in an audio-visual recording, such as a motion picture, television program, music video, or commercial announcement – usually granted to the video producer by the copyright holder or representative

print rights license for making printed notation of the work for distribution – usually granted to a publisher by the copyright holder, though a publisher may choose to buy the copyright instead

permission to edit, cut, or use music contrary to the creative artist's intention – usually asked of the creative team, requested through the publisher on a case-by-case basis, and including details of edits and/or purpose

permission to arrange for using music to create a *different* work based upon the original work, **derivative work** in legal parlance, such as for an orchestra or marching band – usually granted by a publisher of existing print music of the original work

Note: performing **'covers'** of popular music (live), does not require **permission to arrange** if the performance stays true to the original

Note: **music for hire** – a composer's work becomes the property of the paying entity

Finding Where to Request Permissions

Links to search indexes which provide leads to composers', their agents', and music publishers' contacts:

[ASCAP](#)

[BMI](#)

[SESAC](#)

[SoundExchange](#)

[IMDb](#)

Note: these URLs change from time to time, but getting to the homepage will get close.

If the community theatre group rarely uses music, it may be less expensive to request permission for individual titles than to purchase performance rights blanket licenses for both ASCAP and BMI, but that takes more effort and one needs to allow plenty of time for a response.

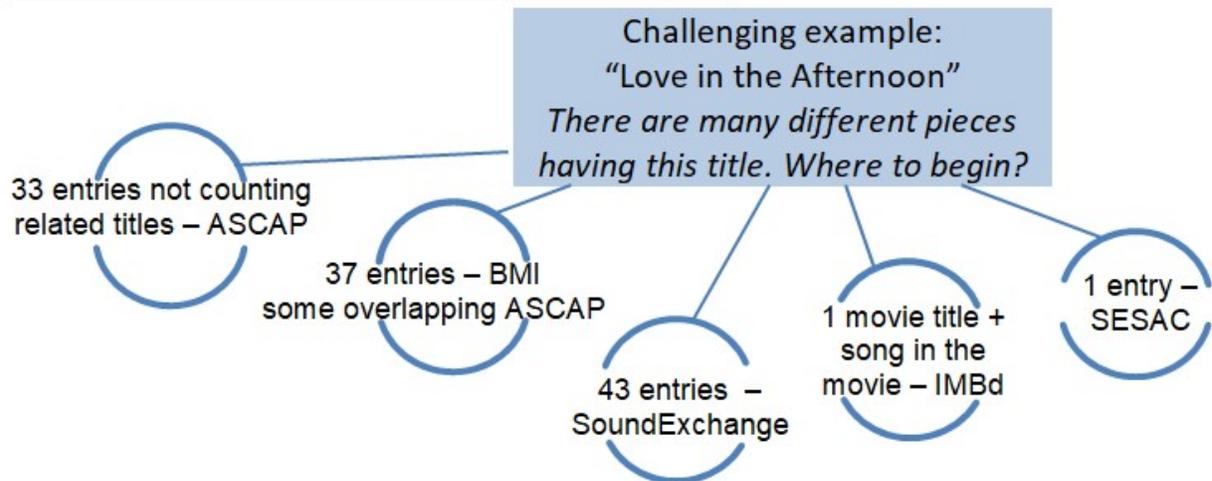
One clever manager reports limiting expenses by using a set repertoire of recordings for non-dramatic music for a given year, licensing only those titles.

Finding whom to ask permissions may take some time, but it is possible with a little gumption. ASCAP (Repertory), BMI, and SESAC have excellent, free access online database indexes for finding contact information of music copyright holders and composers, each for their own clientele composers. Since works having the same title or more than one collaborator are not unusual, a search requires careful attention, as well as comparison among the PRO databases. Another free-to-use database index with data of audio recordings is maintained by SoundExchange, and IMDb online may provide a lead, as well.

Technically, a search must include the U.S. Copyright Office (fee-based) when the composer is not found otherwise: that might take months and there is no guarantee that the song/composition is registered there.

EXAMPLE. Let's say you want permission to use "Love in the Afternoon," an extreme challenge. *(next page)*

Finding the Composer and Copyright Holder



Some songs/compositions are by writer teams, perhaps recorded more than once or not at all, or published with an affiliate of a different PRO, so the same song may appear in more than one index, but the PROs note other affiliates as well as contact information for *their* clients – composers, their publishers, and agents.

ASCAP has 33 entries not counting related titles, BMI has 37 entries, some overlapping those in ASCAP, and SESAC has one. Meanwhile IMDb has a movie with a song of that title, and for pursuing licensing involving a master recording and record label, SoundExchange shows 43 entries to find additional leads. You need to pursue permission for the one matching for composer and other identifiers: the PROs will help you.

Fortunately, **advanced search** is possible, and most titles are not this well used. Some such titles are used for more than one work. Though these businesses each focus on one type of licensing, their indexes provide **leads to finding copyright holders** and, if needed, composers, such as to request permission for using music in a play.

Which permissions and licenses do you need?

To facilitate knowing which permissions and licenses to seek we ask a series of questions.

Checklist for determining types of **permissions and licenses required for each music title**: answers to these questions lead to a permissions list for the title in a given project, and

requesting one permission must be made in light of all these answers for that title, because one permission may be valued differently by the grantor of the license if additional uses are combined.

- 1) Is the community theatre group using a piece of music **under © protection?** ... or in **public domain?**
- 2) What is the **estimated audience number** for a public performance? *This may **impact a license fee rate.***
- 3) Is the music being used for **dramatic** purpose in a play or musical (part of a script, part of telling a story, e.g. incidental music, underscore, song, accompaniment of dance, set change music, etc.)? **Request grand rights license...**
... or for **non-dramatic** purpose (e.g. concert, lobby entertainment, social reception in or not in conjunction with a play or musical performance, pre-show/intermission/post-show music, etc.)? **Request performance rights license**
- 4) Will the music be performed **live or by playback of either a commercial recording or a home-brew recording** made specifically for the purpose? **Request performance rights license only if for non-dramatic use**
- 5) Will the **original play or musical theatre work be altered** in any way? Is there any chance that the use of the music goes **against the composer's or playwright's intention?** Consider for instance political purpose or promotion of a hot social topic. **Ask the composer and playwright for permission, likely starting with the publisher(s) and offering details.**
- 6) Will the original music be **altered in any way prior to or during performance?** (Include audio manipulation.) **Ask the composer for permission, as above.**
- 7) Will a **derivative work** be created from the original music? Will the original music be **cut or edited** otherwise? **Start with asking the music publisher**
- 8) Will you make an **audio recording?** If so, is it the *first* recording of this music? Will an audio recording be distributed? **Request mechanical license of SongFile (low quantity) or The Harry Fox Agency (high quantity).**
- 9) Will an **audio-video recording** be made for archives or for distribution? Will the performance or recording be **broadcast** or provide otherwise for **transmission**, e.g. **streaming, download?** **Start with asking the publisher for guidance.**

Sometimes these permissions are offered gratis, so it doesn't hurt to ask, but since the licensing agents act on behalf of the creative artists and copyright holder(s), this all takes some time, preferably well before rehearsals begin. If you want to get creative with using music, it may be simpler either to use music and plays in the public domain or to write your own.

Are there exemptions to licensing?

While it is tempting to think you might qualify for using music without licensing, community theatre uses of music are unlikely to meet all required criteria, with exception as noted on p. 6. Some uses of music – such as for religious services, in selected

educational purposes and settings, and for a limited circumstance of some performances (likely not including community theatre productions) – *may* meet criteria for exemption.

It is possible to use a song from public domain, which has versions (print or recordings) under copyright, without licensing if you base your use on the original song/ composition. For instance, the *tune* for “Carol of the Bells,” not the lyrics, comes from a Ukrainian folk song in public domain, and use which avoids both the modern lyrics and title might provide a free option, not an exemption *per se*.

- **fair use** – limitations to copyright law allowing exemptions to licensing, including for scholarship, teaching face-to-face in selected situations, and religious services without transmission
- **music [composed] for hire** – Subject to contractual agreement terms, the hiring or commissioning party is considered the author and copyright owner.
- **music parody, music quotation, musical homage** – **Parody** sets alternate lyrics to a song or sets lyrics to an instrumental work; **quotation** offers a brief bit of a recognizable tune inserted into a different original work; **homage** respectfully uses tune(s), style, or other elements of music identified with a composer; and each of these *may* meet fair use exemption.

If you care to dig into understanding exemption options and other sections of the law, these are a good start. An attorney can provide further guidance.

<https://www.law.cornell.edu/uscode/text/17> provides links to Copyright law text with accompanying **explanatory notes** via **Notes tab**. In particular, look to Chapter 1 for **Section 107 fair use exemptions** (four criteria) and **Section 110, paragraph 4, exemption** of some performances.

<https://www.copyright.gov/title17/> provides access to Title 17 chapters and appendices without explanatory notes.

<https://www.copyright.gov/title17/92chap1.html> section offers legal **definitions**.

Why comply?

Complying with composers’ legal rights is the right thing to do and the best model for our students, participants, and patrons. Non-compliance is illegal. Though sometimes expensive, compliance avoids potentially much higher expenses and devastating results for a community theatre.

Instead of our feeling victimized by the government and seemingly greedy businesses, it is liberating to understand and appreciate the fundamental concepts of protecting both the rights and freedoms of creative artists as well as the value and heritage held in their works. With this understanding we can readily champion those rights and values. “To permit it, promotes it,” the “it” here being denial of composers’ rights by using their music without permission – their property and that which makes them who they are as creative artists – and we want neither to permit nor promote denial of those rights.

Additional Reading *13 Online articles accessed May 7, 2018*

- [Licensing terms defined](#) – ASCAP American Society of Composers, Authors and Publishers
- [Music Publishing and Licensing Terminology \(50 terms\)](#) – LicenseQuote
- [Overview of copyright](#) – AACT American Association of Community Theatre
- [License types](#) – BMI Broadcast Music, Inc.
- [Do’s and Don’ts of Licensing musical theatre](#) – MTI Music Theatre International
- [Busted! The Top Ten Myths of Music Copyright](#) – Musical America, Brian Taylor Goldstein
Article dated June 3, 2014
- [Synchronization rights](#) – uslegal.com
- [“Using Recorded Music – Legally”](#) – Stephen Peithman article from *Spotlight*, February, 2002, edited reprint in AACT Resource Library (access available only with member login and download)
- [Grand rights primer](#) – NewMusicUSA, Jack Vees Article dated November 10, 2006
- [Grand Rights vs Small Rights](#) – Musical America (viewpoint of a composer’s business), Steven Lankenau Article dated June 3, 2014
- [Dramatic, Musical rights categories](#) – uslegal.com
- [AACT benefit of membership](#) – AACT: ASCAP performance rights license (recordings only)
- [Alternate licensing options available to creative artists](#) – creativecommons.org

Hidden linked URLs for hard copy printout visibility

p. 1 Access to Google Slides verions of Resource Guide

<https://1787themusical.com/portal-to-other-music-and-interests-of-lucinda-lawrence/>

p. 7 Gordon P. Firemark video and transcript

<https://firemark.com/2015/02/05/entertainment-law-asked-answered-grand-rights-and-sound-recordings/>

p. 9 search engines

<https://www.ascap.com/repertory>

<https://repertoire.bmi.com/StartPage.aspx>

<http://licensees.sesac.com/Repertory/RepertorySearch.aspx>

<https://isrc.soundexchange.com/#!/search>

<https://www.imdb.com/search>

pp. 12-13 Additional Reading

<https://www.ascap.com/help/ascap-licensing/licensing-terms-defined>

https://www.licensequote.com/mlq/music_license_quote.html#Terminology

<https://www.aact.org/rights-royalties-overview>

https://www.bmi.com/faq/entry/what_are_the_different_types_of_copyright

<https://www.mtishows.com/dos-and-donts-of-licensing>

<https://www.musicalamerica.com/news/newsstory.cfm?archived=0&storyid=31862&categoryid=7>

<https://entertainmentlaw.uslegal.com/music-industry/synchronization-rights>

<https://www.aact.org/file/57837/download?token=uAtic2xM>

<https://nmbx.newmusicusa.org/deal-or-no-deal-a-grand-rights-primer>

<https://www.musicalamerica.com/news/newsstory.cfm?archived=0&storyid=31868&categoryid=7>

<https://copyright.uslegal.com/enumerated-categories-of-copyrightable-works/>

<https://www.aact.org/ascap-0>

<https://creativecommons.org/licenses/>

Acknowledgments

Thank you, Matthew Braun and Martha Cherbini, for your generosity of time, superb guidance in the law library, and legal expertise.

Many thanks also to the several friendly unnamed individuals ‘just doing their jobs’, with excellence, patiently adopting my perspective to answer questions of publishers and licensing agencies. Your attitude does not go unnoticed.

Brief Biography

Lucinda Lawrence, Co-Founder of Community Theatre Illinois and Member at Large serving American Association of Community Theatre (AACT) Board of Directors (2018-2021), retired from the University of Illinois where she was involved in effecting

music copyright protections and compliance, among other academic, artistic, and administrative responsibilities. Not an attorney, she now composes and writes lyrics and scripts for original musical theatre, volunteers with several community theatres in east central Illinois, and provides theatre workshops and seminars locally, statewide, and nationally.

Contact: LL.musicmom@gmail.com, talk/text 217-722-4432 <https://1787themusical.com/>