

A Brief Look Into the Growing Importance of Synchronization Licensing In the Music Industry

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Any time a filmmaker, showrunner, advertiser, video game designer, or any other user wants to incorporate a sound recording into their work, they first need consent from the song's rightholder, usually given in accordance with the terms of a license negotiated by the parties.⁵⁷ With the current climate wherein anyone can produce creative content, these 'sync' license deals are becoming a steadier, more viable revenue stream for music industry rightsholders.

Industry-wide data tends to support this assumption. Year-end reports for 2022 demonstrated that synchronization royalties generated \$382.5 million in revenue for the music industry, up 24.8% from 2021.⁵⁸ In fact, income brought in from sync deals was one of only two non-streaming categories to post positive growth (the other being vinyl, up 17.2% from 2021). Further, adjusted for inflation, sync generated almost \$50 million more in 2022 than it has in any other year with recorded data.⁵⁹ To provide some perspective, it is worth comparing sync royalties with the digital single download. Since 2021, sync revenues have outpaced the

⁵⁷ Although, of course, fair use considerations may come into play, and a sync license may not be required in such circumstances, to wit, *Lenz v. Universal Music Corp.*, 801 F.3d 1126 (9th Cir. 2015) (determining that rightholders need to consider fair use before delivering DMCA takedown notices for allegedly infringing content, where the infringing work in question was a 29-second clip of child dancing to *Let's Go Crazy* by Prince.).

⁵⁸ Joshua P. Friedlander & Matthew Bass, YEAR-END 2022 RIAA REVENUE STATISTICS, available at www.riaa.com/wp-content/uploads/2023/03/2022-Year-End-Music-Industry-Rvenue-Report.pdf.

⁵⁹ See U.S. Sales Database, RIAA, www.riaa.com/u-s-sales-database/.

digital single download, which once made up nearly one-fourth of all industry income.⁶⁰ This progress indicates that sync licensing has “the potential to keep growing at a healthy pace for a while.”⁶¹

Sync Licensing Basics

Unlike compulsory licensing mechanisms that can be found elsewhere in the music copyright landscape, each synchronization license must be individually negotiated between the rightsholder and licensee.⁶² Natural bargaining power dynamics develop in accordance with such negotiation. Let’s consider a Netflix television show that is looking for a song to play during an episode end credits sequence.

Scenario 1: The studio may reach out to an artist (or, more practically, their label) with a specific song in mind to fill their need. The artist could be very well-known, but also might be very particular about licensing their music for use in other media. The studio may have already intended on naming the episode the same title as the song they wish to license, and there may be some dialogue in the episode related to the song or artist. In such a scenario, the artist holds a great deal of bargaining power, and the studio will likely have to agree to pay hundreds of thousands of dollars in exchange for the synchronization license.

Scenario 2: An undiscovered local artist may be looking for an additional revenue stream, as their music has not been getting enough play to make a living off of. The artist may reach out to the studio (or

⁶⁰ *Id.* Digital single downloads, at their highest figures, accounted for 23.4% of total revenue (2012) and made up 79.2% of the total sales volume (2014).

⁶¹ Bill Rosenblatt, *New Music Industry Numbers From RIAA And Edison Research Show Growth Slowing*, *Forbes* (Mar 9, 2023), www.forbes.com/sites/billrosenblatt/2023/03/09/new-music-industry-numbers-from-riaa-and-edison-research-show-growth-slowing/?sh=1fb4e15a4acf.

⁶² *See, e.g.*, 17 U.S. Code § 115.

a sync placement intermediary), offering up any and all recorded works. In such a scenario, the studio holds all of the bargaining power, and the artist may only be offered a few hundred dollars in exchange for the synchronization rights.

In this way, bargaining power plays a crucial role in developing the terms of a sync license.

The publishing side receives an additional benefit from sync licenses. On top of the initial payout negotiated up front, those who own publishing rights earn public performance royalties for each play of the audiovisual work.⁶³ Through this mechanism, a rightsholder on the publishing side can expect continued revenue streams from a sync license for audiovisual projects like commercials or reruns of television shows.

Practically, deals are not always brokered directly between a studio and an artist. Sync libraries exist as an industry middleman, allowing artists to upload their music to readily license to those seeking music to add to their creative projects.⁶⁴ Essentially, this creates a marketplace for licensees to shop for and purchase licenses for the musical works that best suit their projects. Other companies post listings for film and television sync pitching opportunities.⁶⁵

⁶³ Andrew Parks, *SYNC LICENSING & MUSIC PUBLISHING: HOW DOES IT WORK?*, SongTrust (Oct. 11, 2022), <https://blog.songtrust.com/sync-licensing-your-music-how-important-is-it-really> (“Songwriters earn public performance royalties in addition to any upfront fee whenever an audiovisual work is aired or streamed. For example, if your song is used in a commercial, you could receive a flat payment of \$5000 and earn additional royalties each time the commercial is played or viewed.”).

⁶⁴ See, e.g., Musicbed, www.musicbed.com/; Music Gateway, www.musicgateway.com/music-library-music-licensing; see also Marc, *Top 46 Sync Licensing Music Libraries 2023*, Millennial Mind (Jan. 2, 2023), <https://www.millennialmind.co/top-sync-licensing-music-libraries/>.

⁶⁵ Jason Blume, *10 Things You Need to Know About Placing Music on TV and in Films*, BMI (Apr. 25, 2014), www.bmi.com/news/entry/10-things-you-need-to-know-about-placing-music-on-tv-and-in-films (“Another option [for sync opportunities] is to use tip sheets and pitch services. A *tip sheet* is a document that lists companies seeking music; the kinds of music they’re looking for; and information about how to contact them and submit your work. . . . Cue Sheet (www.cuesheet.net) is a tip sheet that focuses exclusively on TV and film

The Desired Result For Many: Exposure

Why would the artist from Scenario 2 above relinquish some creative control over their music for merely a few hundred dollars? For many artists, their main motivation for permitting uses of their songs in movies, television shows, commercials, and video games is often not primarily financial.⁶⁶ Instead, just like in the days where AM / FM radio airplay brought exposure to artists in return for little-to-no (or even negative) compensation, so too does sync licensing placements provide opportunity to reach larger and untapped audiences.⁶⁷

For an extreme example, singer Kate Bush experienced a resurgence to the charts with her single *Running Up That Hill (A Deal With God)* after she

music. . . . *Taxi* (www.taxi.com) and *Broadjam* (www.broadjam.com) are companies that, among other services, provide listings of television and film music pitching opportunities to their members.”).

⁶⁶ *How to maximize your exposure with sync licensing and placements*, Bandlab (June 23, 2023), blog.bandlab.com/guide-to-sync-licensing-and-placements/.

⁶⁷ See 17 U.S. Code § 114; John Conyers, Jr., INTRODUCTION OF THE PERFORMANCE RIGHTS ACT OF 2009, H.R.848 — 111th Congress, Congressional Record Vol. 155, No. 22 (February 4, 2009), available at www.congress.gov/111/crec/2009/02/04/CREC-2009-02-04-pt1-PgE202-4.pdf (describing 17 U.S.C. § 114 as “a glaring inequity in America’s copyright law . . . that exempts over-the-air broadcasters from paying those who perform the music that we listen to on AM and FM radio.”); Brandon H. Nemeck, *No More Rockin’ in the Free World: Removing the Radio Broadcast Exemption*, 9 J. Marshall Rev. Intell. Prop. L. 935, 936 (2010) (“The radio rewards artists who make highly regarded music with airtime and listener exposure, but the Copyright Act only requires radio broadcasters to pay royalties to composers each time their composition is played. . . . [P]erformers who actually play the songs and put the composer’s piece of music into audible form do not receive royalties.”); Elias Leight, *‘Nobody Is Scrutinizing This’: How Labels Pay to Get Songs on the Radio*, Rolling Stone (Sept. 10, 2019), www.rollingstone.com/music/music-features/pay-for-play-how-labels-pay-songs-radio-871457/; see also H.R.4130 - American Music Fairness Act of 2022, 117th Congress (2021-2022); *AM/FM Royalty Loophole*, SoundExchange, www.soundexchange.com/advocacy/closing-the-amfm-radio-royalty-loophole (“The reality is that AM/FM radio – terrestrial broadcast radio – uses music to draw an audience that in turn allows broadcasters to bring in billions in revenue from advertising—all while paying nothing for their primary product!”).

agreed to place the song in popular Netflix series *Stranger Things*.⁶⁸ Bush's sync deal paid off big time: Spotify streams for the 37-year-old song increased 9900%,⁶⁹ and her overall catalog received a 439.3% lift as a result of this placement.⁷⁰ Bush owns the masters to many of her songs, so much of these streaming royalties goes directly to her.⁷¹ The *Stranger Things* sync placement led to boosts in revenue from another sync deal in place with TikTok; *Running Up That Hill* has been attached to over two million TikTok videos, many of which with substantial view count.⁷² And TikTok pays out for such sync uses on a *per video* basis, so Bush doubtless has benefited substantially from consenting to use of her song in *Stranger Things*.⁷³

⁶⁸ Bill Kopp, *The Expanding Universe of Music Sync: How It Works, Understanding The Opportunities*, Recording Academy (May 3, 2023), www.grammy.com/news/music-sync-explainer-how-it-works-opportunities-getting-paid-future-of-sync; but see Erica Campbell, *Kate Bush granted 'Stranger Things' permission to use 'Running Up That Hill' because she's a fan*, NME (June 2, 2022), www.nme.com/news/music/kate-bush-granted-stranger-things-permission-to-use-running-up-that-hill-because-shes-a-fan-3239169 (indicating that Bush licensed the song because she was a fan of the show, without much consideration of exposure).

⁶⁹ *Id.*

⁷⁰ *Catalog*, Spotify for Artists (Sept. 2022), fanstudy.byspotify.com/edition/catalog.

⁷¹ Aimee Picchi, *Singer Kate Bush earned \$2.3 million after "Stranger Things" popularized "Running Up That Hill"*, CBS News (July 1, 2022), www.cbsnews.com/news/kate-bush-stranger-things-running-up-that-hill-earning-millions/.

⁷² See D. Bondy Valdovinos Kaye, *Running Up That Hill: How Stranger Things and TikTok pushed Kate Bush's 1985 pop classic back to the top of the charts*, The Conversation (June 6, 2022), <https://theconversation.com/running-up-that-hill-how-stranger-things-and-tiktok-pushed-kate-bushs-1985-pop-classic-back-to-the-top-of-the-charts-184443> (mentioning that "[a] thirty-second version of the Stranger Things clip has been posted and reposted on TikTok, gaining millions of views in just over a week, and Kate Bush's song has been used in over 500,000 short videos.").

⁷³ See *TikTok Royalties : How are they calculated?*, Horus Music (June 16, 2021), www.horusmusic.global/tiktok-royalties-how-are-they-calculated/ ("[T]o put this simply, every time a user decides to use your music to make a video, this generates a royalty.").

More generally, this trend holds true.⁷⁴ In a joint study published by Netflix and Spotify analyzing stream results from sync placements with Netflix, the companies reported that “artist discoveries jump between +50% and +6,000%” in the wake of appearances in series on the streaming platform.⁷⁵ Sync placements lead to engagements beyond streaming as well; “Harry Nilsson's 1971 song ‘Gotta Get Up’ was added to 7,613% more playlists in the days right after it appeared in 2019's *Russian Doll*, compared with the days right before.”⁷⁶

TikTok as An Exposure Jackpot

While movie, television, advertising, and video game synchronization opportunities have been around for decades, social media sync opportunities have quickly become an important channel for emerging artists.⁷⁷ TikTok specifically has played a critical role in launching many artists to stardom including Lil Nas X, Lizzo, and Jack Harlow.⁷⁸

By the structure of the platform, TikTok offers a social mechanism through which a catchy or trendy song can be synced by hundreds of thousands of users and viewed, reshared, and commented on millions of times.

⁷⁴ Paul Resnikoff, *Is Sync the New Radio? ‘Running Up That Hill’ Isn’t the Only Track That’s Finding New Fans After Scoring a Major Placement*, Digital Music News (Oct. 11, 2022), www.digitalmusicnews.com/2022/10/11/sync-the-new-radio-running-up-that-hill-more/.

⁷⁵ *Catalog*, *supra* note 70 (“When you land a sync, we see a huge jump in brand new listeners. We partnered with Netflix to analyze a set of syncs and saw artist discoveries jump between +50% and +6,000%. But it doesn’t stop there — the rest of your catalog also gets a boost.”).

⁷⁶ Jonathan Cohen, *How Syncs Supercharge Your Fans: Insights from Spotify for Artists and Netflix*, Spotify for Artists (Sept. 28, 2022), artists.spotify.com/blog/how-syncs-supercharge-your-fans-insights-spotify-for-artists-netflix.

⁷⁷ See Mia Venkat, *TikTok has changed music — and the industry is hustling to catch up*, NPR (May 22, 2022), www.npr.org/2022/05/22/1080632810/tiktok-music-industry-gayle-abcdefu-si-a-tai-verdes-celine-dion.

⁷⁸ Christian Silvia, *10 Popular Musicians Who Owe Their Career To TikTok*, Screen Rant (Oct. 10, 2022), screenrant.com/popular-musicians-started-got-famous-tiktok/.

For example, Tai Verdes was working at a Verizon store in Los Angeles when he put out *Stuck in the Middle* on TikTok; the song quickly made him a viral sensation, and he has since signed a record deal, amassed over 7 million monthly listeners on Spotify, and accumulated over a billion global streams.⁷⁹ For undiscovered artists, Verdes posits that TikTok “is like buying lottery tickets,” and that exposure can come for artists who make use of the platform at every opportunity.⁸⁰

TikTok exposure pays dividends for established artists as well. For example, Fleetwood Mac’s *Rumours* returned to the Billboard Top 10 album chart for the first time in forty years after a TikTok video of a cran-raspberry-sipping skateboarder singing along to *Dreams* went viral.⁸¹ *Let’s Groove* by Earth, Wind & Fire “saw its Spotify streams rise by 24.7% 60 days after its peak on TikTok charts” as a result of a viral dance trend.⁸² Another TikTok dance caused Spotify streams for Sandy Marton’s 1985 release *Camel by Camel* to jump from 45,000 to 5.8 million.⁸³ Surely, the platform allows for artists of all types to reach wider audiences and indirectly grow their streaming revenue.

⁷⁹ Brooke Kato, *From Verizon worker to star: Tai Verdes’ TikTok fairytale*, New York Post (July 13, 2021), nypost.com/2021/07/13/tai-verdes-rise-to-fame-from-verizon-worker-to-tiktok-star/; Tai Verdes, open.spotify.com/artist/2kCO8LXN1usaOPL3iEE28I; CourtneyB, *TIKTOK STAR TURNED PHENOM TAI VERDES ON MUSIC AND HIS LIFE ON TOUR*, The Source (Oct. 7, 2022), thesource.com/2022/10/07/tiktok-star-turned-phenom-tai-verdes-on-music-and-his-life-on-tour/; Kai Verdes – Spotify Top Songs, kwordb.net/spotify/artist/2kCO8LXN1usaOPL3iEE28I_songs.html (1,007,396,842 total Spotify streams as of 2023/07/05).

⁸⁰ Elias Leight, *TikTok Is a Lottery, and Tai Verdes Is Winning*, Rolling Stone (July 23, 2020), www.rollingstone.com/music/music-features/tai-verdes-stuck-in-the-middle-1031571/.

⁸¹ Ben Sisario, *Fleetwood Mac’s ‘Rumours’ Returns to the Top 10, Thanks to TikTok*, New York Times (Oct. 19, 2020), nytimes.com/2020/10/19/arts/music/fleetwood-mac-billboard-chart.html.

⁸² Callie Ahlgrim & Taylor Tyson, *TikTok’s Power of Resurrection*, Insider (Apr. 11, 2023), insider.com/popular-tiktok-songs-from-past-decades-trending-now-2023-4.

⁸³ *Id.*

Returning to a general discussion of sync, exposure increases from sync licensing translate to real money. Let's take a moment to appreciate how these increases in streaming royalties translate to dollars and cents. For example, reports indicate that in the month immediately following the airing of the *Stranger Things* episode bearing Bush's song, Bush earned \$2.3 million in streaming royalties.⁸⁴ Elsewhere, a study of 100 viral TikTok songs demonstrated a combined earnings of over \$100 million.⁸⁵

Synchronization licensing is a low-risk, high-reward revenue source for artists and songwriters who can take advantage of the sync market and invest in themselves. The importance of this market within the music industry has experienced a steady uptick in recent years and projects to hold steady as a major contributor to formulating how music is created, curated, and consumed. Rightsholders in musical works should understand the up-front and long-term, direct and indirect benefits of sync deals. Such knowledge and foresight involving sync licensing can play a crucial role in launching a career, skyrocketing streaming numbers, and earning serious money.

One final point: the Hollywood Strikes—in which writers and actors are both advocating for fair pay and responsible use of A.I. practices, among other bargaining points—will obviously lead to less sync opportunities for film and television in the near future.⁸⁶ But this temporary diminution in the sync market will not last indefinitely, and artists should be optimistic that a return to the Hollywood status quo (once a labor deal is

⁸⁴ Aimee Picchi, *supra* note 71.

⁸⁵ Shruti Shekar, *If your song goes viral on TikTok, you could make millions*, Yahoo Finance (Feb. 18, 2021), www.yahoo.com/video/if-your-song-goes-viral-on-tik-tok-you-could-make-millions-160819565.html (a “cumulative earnings of a staggering \$100 million and have been played almost 23 billion times.”).

⁸⁶ See Kristin Robinson & Steve Knopper, *What the Hollywood Strikes Mean for the \$2B Music Synch Business*, Billboard (July 26, 2023), www.billboard.com/pro/what-hollywood-strikes-mean-music-synch-business/.

struck) will bring with it an influx of new demand for sound recording synchronization placements.