

# Synchronisation Licence Fact Sheet

## What is a Synchronisation Licence

A synchronisation licence (usually referred to as a “sync licence”) gives someone the right to use a song in a TV show, movie, video game or any other type of material. It is called ‘synchronisation’ because the user wants to synchronise their video material with the audio material created by another person.

## When do you need a Synchronisation Licence

Each time a filmmaker or other creative body wants to use a specific song within another body of work they must seek the consent of the owner of that song. The owner will either be the recording artist or the record label that controls the copyright in that song.

## Why do you need a Synchronisation Licence

Under the copyright act, filmmakers and other content producers are required to get the consent of the copyright owners of songs before they can synchronise, reproduce, adapt and distribute the song in this alternative context. The synchronisation licence provides all the terms in relation to the use of the song by the filmmaker (or contracting partner) and states how much the song’s copyright holder will get paid for such usage.

## How to use this Fact Sheet and included Checklist

Included with this fact sheet is a checklist of many of the issues that are prevalent in synchronisation licences. The checklist will give you a quick idea of the key terms of the licence whilst this fact sheet provides added details on key clauses. For ease of reference, all clause numbers used in the checklist will be mirrored in this fact sheet.

By referring to both these resources, we believe that you will be in a position to better decide whether or not to sign on that dotted line, and how better to negotiate getting there!

## Key Terms of a Synchronisation Licence

### Clause 2 Song Owner/Controller Details

When a filmmaker (or otherwise) finds a song they want to use within a visual, they must seek the consent of the copyright owner of that song. The simplest way to find out this information would be to speak to the Phonographic Performance Company of Australia (PPCA) as they have records of the owners of sound recordings in Australia, or alternatively to the artist’s stated representative (management, label etc).

### Clause 3 Song Details

Song owners should expressly state in the licence how much of the song a filmmaker can use. For example, if the filmmaker initially asks to use 10 seconds of a song, the fee a song owner would require is small, compared to if 3 minutes of the song were to be used.

Sometimes, there may be several song owners in one song. For instance, if a song contains a large sample within it, the filmmaker must get the consent of the sample owner as well as the song owner. Another example may be that the song is written by 3 different people, who are under 3 different recording companies. It is important that the filmmaker gets written confirmation from the song owner as to the ownership percentages in the song to make sure all consents are covered.

### Clause 4 Film Details

Again, it is important that the song owner sets the rules and/ or agrees to the terms of how the song will be used by the producer. For instance, the song can be used in the actual video – but can it be used in related promotional material and TV advertisements? The more uses the producer requires, the higher the licence fee should be. Alternatively, a separate agreement should be made for a separate use (i.e. TV advertisement).

### Clause 6 Term

As synchronisations are used on such a variety of products, it is important to use a term that fits well with the type of usage needed. For example, if a song is needed for a promotional campaign, the term will usually be based on time – say 3 weeks or 3 months.

If a producer requires a song to be used on a DVD, the term would be expressed in Terms of units – say 10,000 units.

If used in a film or video game, a term would more likely be forever or ‘in perpetuity’ as the producer cannot remove the song once it has been made, viewed and sold.

Note that each quantity/ period listed above is an example rather than a recommendation.

### Clause 7 Rights

It is very important that the song owner clearly describes which rights it gives to the producer under this licence as it will directly relate to how much the owner can charge. In short, the more rights given, the higher the fee should be.

### *Exclusive vs Non-Exclusive*

Producers may request exclusive use of the song for the term of the licence. This means that the song owner may not licence the song elsewhere for the period of term. In return, song owners may seek to charge a higher fee for such exclusivity. Exclusivity may also refer to a type of synchronisation (for example, a tourism advertisement, a film etc).

### **Clause 8 Options**

Depending on how successful the producer's initiative becomes, they may want to extend the term so that they can use the song for a longer period. It must be remembered that the producer does not have to extend the Term – but if they do, the song owner must agree with that decision.

Again, any extension would be on the same scale as how the term is defined. For example, if the producer used the song on DVDs, they would ask for an option to extend the amount of units. Similarly, if it were a promo campaign – an option to extend for an extra 3 months would work or an option for different territories. No options are used for films or video games as the term is usually in perpetuity.

### **Clause 9 Warranties**

As noted in Clause 3, producers must ensure that they have cleared all the rights needed to use the song. In order to protect themselves, producers usually require that the song owner guarantees that they are able to grant the producer the necessary rights.

It is also important to note that besides record labels, there are other copyright owners within a song – these are the publishers and actual songwriters of a song. Publishers and songwriters control the composition within a recorded song. Accordingly, producers must also sign a licence with the publisher in order to use the song with their visuals.

Please refer to our fact sheet on publishers for more information about publishers and copyright.

### **Clause 10 Synchronisation Fees**

#### *Amount*

Songwriters can charge for the use of the song via a flat fee – say \$1,000, or choose a more complex structure through the use of a per unit model and recoupable advances.

In a more complex model, the greater the accounting and booking keeping fees will be. These factors must be weighed up when deciding the best and fairest pricing method for the usage.

#### *Option or Extension Fee*

As noted in Clause 8, a producer may have the option to extend the term of a contract. This right usually does not come free and the producer must pay a further fee to the song owner to affect an extension.

#### *Most Favoured Nations*

The concept of a "Most Favoured Nations" clause is highly contentious around the world.

A Most Favoured Nations clause exists for the circumstances where a retailer may give a better royalty rate to Customer A than to Customer B. If this happens under an MFN clause that retailer must also pass on those better rates to Customer B.

For example, if the producer gives the record label 20 cents per DVD sold, but the producer also pays a publishing company (who owns the composition in the song) 29 cents per DVD sold – under MFN, the producer must increase the royalty paid to the record label to 29 cents.

There are questions as to whether MFN clauses amount to collusion within the industry and some labels are phasing out the use of such clauses due to these concerns.

### **Clause 11 Termination Rights**

In the event that the song owner terminates the licence due to a breach of use by the producer, the song owner may require that they receive an amount of the producer's profits that they gained for such use, or they may seek to take control of all units of any DVDs that are in breach of the licence. There may be further ways in which the song owner is compensated for breaches by pursuing the matter in court or through some form of settlement between the parties.