



HAPPY HOLIDAY LICENSING

FROM RED TAPE TO RED RIBBON: COPYRIGHTS, LICENSES,
AND SONGS IN THE PUBLIC DOMAIN



Before you embark on a holiday release that will include your recorded version of iconic songs from Christmases and Hanukkahs past, you must first acquire all the necessary licenses. Any time you reproduce and distribute a recording of someone else's composition, you need a mechanical license allowing you the use of the composition – even if you're giving it away as a gift!

That's right, just like you need a license to drive a car, fly an airplane or sell real estate, Copyright Law requires that all music artists and/or record labels obtain a mechanical license before distributing a recording that includes a song or composition they didn't write.

MECHANICAL LICENSE

A mechanical license is a broad term that dates back to 1909, soon after the invention of the phonograph, when the US Copyright Act was significantly revised. The Copyright Act of 1909 created the first compulsory mechanical license designed to prevent anyone from making a "mechanical reproduction" of a musical composition without the consent of the copyright owner. Originally enacted to govern piano rolls for player pianos, this compulsory license makes it possible to record and distribute a cover version of a song after an original recording had been previously released.

In today's terms, a mechanical license refers to the reproduction of a musical composition in the form of a sound recording. Any time you record and distribute a composition you did not write – through physical (CD or vinyl) and digital means – you are required to purchase a mechanical license. Mechanical licenses are issued by the owner or controller of the composition – often publishers or agencies acting on behalf of songwriters and composers.

HOW IT WORKS

Let's say you've recorded an album, mostly of your own material, but you are including three cover songs that require a mechanical license. Your initial CD order is going to be for 1,000 CDs. The law states that for every CD you manufacture that includes the cover song(s), the statutory royalty rate equals 9.1¢ per song, per CD. In this example, the royalties you would owe equal \$273. The formula: 1,000 (CDs) x .091 (9.1¢) x 3 (songs).

For the record (no pun intended), the 9.1¢ publishing royalty is standard for all recordings of songs that run five minutes or less. For a track over five minutes in length, the statutory rate is 1.75¢ per minute.

Of course, you're a savvy artist, so you're also going to deliver your album digitally. What then? The same statutory rates that apply to CDs apply to digital downloads (also known as DPDs or Digital Product Downloads). For DPDs, the royalties

are calculated on the actual number of downloads. In this same example, if your new album is downloaded 500 times, you would owe another \$136.50 (500 x .091 x 3). Additionally, if your cover songs are available as singles, the same rates apply to all downloaded single tracks.

If you don't intend to sell the CDs – maybe these are special gifts to fans or a holiday incentive to spark larger sales – you still need a license for every cover song included on your album. You'll note the language says "record and *distribute*," not "record and *sell*." For every CD or download distributed that includes a third-party composition, regardless of whether you're making money on the transaction, the copyright owner is owed a royalty.

You'll also note the language includes the word "compulsory," which means the mechanical license cannot be withheld. Under Section 115 of the Copyright Act, *anyone* is entitled to record a song which has already been released publically by another artist, irrespective of a copyright owner's permission. This type of license is referred to as a "compulsory mechanical license," and is obtained by submitting to the copyright owner a Notice of Intent to Obtain a Compulsory License. Thankfully, we've partnered with Limelight, so all this is easily taken care of.



LIMELIGHT

Oasis Disc Manufacturing has arranged a simple way for you to get the important licenses you need for legal compliance when you include cover songs on your CDs. **Limelight** by RightsFlow, will get you into compliance pronto – without any confusing paperwork or lawyers' fees. It's simple:



- You provide Limelight with basic information on an easy online form (including the name of the song, the original artist, your album's name, and the name of the group).
- Limelight uses its automated licensing system to obtain a license for any song, from any publisher (including international publishers).
- You pay a service fee - \$15 or less per license - plus the statutory publishing fees for the mechanical license.
- Limelight notifies you of license and permission to proceed with release.
- Limelight offers all additional copyright research that may be needed, transparent to you.
- You can use Limelight for short runs and special projects (for as few as 25 downloads or CDs).

In short, **Limelight** is a one-stop online tool that allows anyone to clear cover songs quickly and easily, and Limelight pays out all royalty fees to the respective songwriters and/or publishers for the composition(s) for which you are receiving a mechanical license.

SONGS IN THE PUBLIC DOMAIN

There are a great number of popular songs, including many holiday favorites, for which you are not required to obtain a mechanical license in order to record and distribute them. These are songs in the public domain, which generally includes works that are ineligible for copyright protection or whose copyrights have expired. Songs or musical works first published in 1922 or earlier are in the public domain in the U.S.

If you want to include a recording of a song that you think might be in the public domain, [PD Info Online](#) is a good place to start to determine if a particular song truly falls into the public domain.

Beware, even if the song you've chosen does fall into the public domain, you must also make sure the version you're recording isn't a "copyrighted arrangement." A copyrighted arrangement consists of a version of a public domain song that includes changes or alterations with "at least a minimum amount" of creative musical expression. Sometimes, this can be difficult to determine. One excellent rule of thumb: if you used sheet music to learn it, you can find the copyright information there.

We've done a little of the work for you if you're planning on including a Christmas song on your next release. **Below is a list of Christmas favorites that ARE in the PUBLIC DOMAIN.**

"Angels We Have Heard On High"

"Away In A Manger"

"Deck The Halls"

"God Rest Ye Merry Gentlemen"

"Good King Wenceslas"

"Hark! The Herald Angels Sing"

"It Came Upon The Midnight Clear"

"Jingle Bells"

"Joy To The World"

"O Come All Ye Faithful"

"O Come O Come Emmanuel"

"O Holy Night"

"O Little Town of Bethlehem"

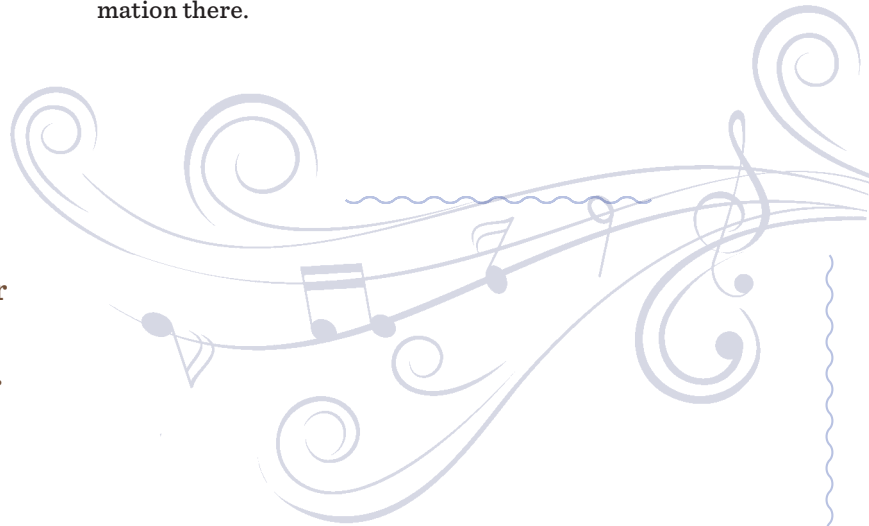
"Silent Night"

"The First Noel"

"The Twelve Days of Christmas"

"We Wish You A Merry Christmas"

"What Child Is This"



These Christmas Songs ARE NOT in the public domain and require that you obtain a mechanical license. We've also included the writer/composer information.

"All I Want For Christmas Is My Two Front Teeth"

(Donald Yetter Gardner)

"Do You Hear What I Hear?"

(Noel Regney, Gloria Shayne Baker)

"Santa Claus Is Coming To Town"

(Fred Coote, Haven Gillespie)

"A Holly Jolly Christmas"

(Johnny Marks)

"Carol Of The Bells"

(Peter J. Wilhousky, Mykola Leontovich)

"Feliz Navidad"

(Jose Feliciano)

"Frosty The Snowman"

(Steve Nelson, Walter E. Rollins)

"Have Yourself A Merry Little Christmas"

(Ralph Blane, Hugh Martin)

"Here Comes Santa Claus

(Right Down Santa Claus Lane)"

(Gene Autry, Oakley Haldeman)

"I'll Be Home For Christmas"

(Walter Kent, Kim Gannon, Buck Ram)

"Jingle Bell Rock"

(Joseph Carleton Beal, James Ross Boothe)

"Let It Snow! Let It Snow! Let It Snow!"

(Sammy Cahn, Jule Styne)

"Little Drummer Boy"

(Katherine K. Davis, Henry V. Onorati,

Harry Simeone)

"Rockin' Around The Christmas Tree"

(Johnny Marks)

"Rudolph The Red Nosed Reindeer"

(Johnny Marks)

"Silver Bells"

(Jay Livingston, Ray Evans)

"Sleigh Ride"

(Leroy Anderson, Mitchell Parish)

"The Christmas Song (Chestnuts Roasting on an Open Fire)"

(Mel Tormé, Robert Wells)

"White Christmas"

(Irving Berlin)

"Winter Wonderland"

(Felix Bernard, Richard B. Smith)



MAKE IT YOUR SONG

There's nothing wrong with a traditional and straight take on any holiday classic. Then again, reinventing a Christmas or well-known holiday number can be an opportunity for you to explore some fun and interesting musical territory. Personalizing a standard composition can be achieved in a number of ways.

One sure-fire method of transforming a classic is to inject your genre (bluegrass, reggae, hip hop, metal) into a typically straightforward composition. As long as there is enough of the original structure and melody intact, you can achieve the balance of something new and something totally familiar in the same song.

Even without a radical shift in genre, things like tempo changes, key changes and variations on the standard chords used in a song can achieve that "new, yet familiar" objective. Whatever your style of music, adding personal touches that reflect your sound and style – gang vocals, harmony vocals or specific instrumentation – is a good way to take ownership of any cover song.

You can even try to rebuild a song. Take the basic elements – verse, chorus, bridge, etc. – and forget how they are typically arranged. Deconstructing a song and recreating it as an original composition (to the extent that it's possible) can help you discover new avenues into the sentiments and emotional core of a song that has been explored countless times before.

***Good luck spreading musical cheer,
and have a happy holiday!***

