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LICENSING SONGS FOR VIDEO GAMES

By Todd and Jeff Brabec

In recent years, the video game industry has been the fastest growing area of the entertainment business. And music is a major part of many of these games. For songwriters, recording artists (new or old), film and television composers, music publishers and record companies, the video game industry represents a new and valuable source of income.

For pre-existing songs, there are a number of different ways to license music in this area depending on the success of the song being used, the type of video game, how the game is distributed and the policies of the manufacturer. Some of the major issues that will be covered in many of the licenses follow.

Music

There will be a description of the composition being used including information on the title, songwriter, publisher and percentage controlled. There should also be a description as to how the song is used in the game.

Game Title

The exact title of the game will be mentioned.

Description Of The Configuration

Some descriptions are very broad and others are very specific. For example, some agreements include language covering all software programs or other electronic products in any format or platform that is designed for use with computers. Others refer to any existing electronic devices as well as any which may be developed in the future. Many also indicate the type of distribution medium on which the game may be distributed. For example, the contract may actually mention DVD, CD-ROM, consoles arcades, handheld devices, magnetic diskettes and optical disks as permitted distribution media. Others will be less specific or mention the previous media but provide that distribution of the game will not be limited to only the areas mentioned.

Online Versions

If the game is available on-line, the agreement will have language which permits the transmission of the game over telephone lines, cable television systems, cellular telephones, satellites and wireless broadcast as well as other ways of transmission which are in existence or which may be developed in the future.

Fees

Some agreements provide for an actual royalty but many provide for a one-time buy-out fee per composition regardless of the number of games actually sold or how many times the game is played. Per game royalties range from 8 cents to 15 cents per composition and buyouts range from \$2,500 to over \$20,000. As in many other areas, royalties and fees depend upon the value of the composition, the prior history or anticipated sales of the game, bargaining power of the parties and the needs of the video game producer, music publisher and songwriter.

Term

Some agreements have a set term (such as 5 years, 7 years, 10 years, etc.) during which the song can be used in the video



We Got Game

Pictured after the Music Publishing Panel at the recent Game Developers Conference are Worldwide Executive of Music for Electronic Arts Steve Schnur, composer Shawn Clement, composer Jack Wall, composer Tommy Tallarico, VP Business Affairs, Chrysalis Music, Jeff Brabec and ASCAP Executive VP Todd Brabec.

game. If there is a set term, the video manufacturer will many times have the right to sell off its inventory of games for a period of time once the term is over. Other licenses last for as long as the video game is in distribution. And others state that the term is for the life of copyright of the composition.

Territory

The territory of distribution is usually the world.

Companion Products

Many game producers receive the right to release the compositions used in the video game in companion products such as an audio CD or separate DVD release of the game. Sometimes fees are actually set in the agreement (for example, 100% or 75% reduced statutory rate for a CD) and other times there is a good faith negotiation provision as to the ultimate fee that will be charged for the applicable companion product.

Collateral Materials

Many agreements provide that the video distributor can use the composition in its advertising, promotional and marketing materials related to the video game. This may include in-store promotions and demonstrations, DVD trailers and even advertising over closed-network college campuses as long as the use is in-context. Such promotional usage does not include out-of-context uses or other types of advertising campaigns such as network, cable or satellite television.

Credit

Most contracts provide that credit for the composition be given on the inside of the video game packaging. Credit may also be placed in the manual for the game or actually in the digital format of the game. If there is a master recording also licensed, the notice will usually contain the name of the record company and the name of the recording artist in addition to the composition information.

Other Provisions

Notice, applicable law, audit, warranty and indemnification provisions are similar to most other license agreements.

This article is based on information contained in the 4th edition of the book *Music, Money, And Success: The Insider's Guide To Making Money In The Music Industry* written by Jeffrey Brabec and Todd Brabec (Published by Schirmer Trade Books/Music Sales). By permission © 2004 Jeff Brabec, Todd Brabec. The book is available for sale on ASCAP's website in the resourceguide: www.ascap.com/resource/

[Games: They're Playing Our Songs](#)

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