

Getting Creative With Video Games: Sync Rights and Wrongs

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Back to Basics: A Primer on Intellectual Property Rights in Video Games In this series, we discuss some of the fundamental concepts of intellectual property law as they relate specifically to video game companies and other unique players in the space, including esports teams and content creators. The intention of these articles is to provide a basic understanding of the various intellectual property rights important to the industry - from the differences between a trademark and a copyright, to what's behind a DMCA takedown notice. These articles are not legal advice, nor should they be relied upon as such, as the particular facts of each unique circumstance determine how the legal issues will play out. If you have any questions concerning the content of any article, or want to know more about any of the topics we discuss, we encourage you to contact the authors. We promise, we don't bite. Before proceeding, be sure to read up on the basics of trademarks (which we covered [here](#) and [here](#)) and copyrights (covered [here](#), [here](#), and [here](#)).

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By now you've got a great concept for your new video game, **YOWZA!!**, cleared the rights to the trademark, filed an application in the U.S. Patent and Trademark Office, and obtained all necessary assignments from your independent contractors helping you put all facets of the game together. Fantastic. Now you want to add some great music and sound effects to the game. Or maybe you're a streamer and you want to entertain your chat with your favorite tunes while you grind away. There are realistically only a few ways to legally do this.

Adding Music to Your Video Game

While sources of copyright-free music do exist, you are better off assuming that the music you hear on the radio, in a video, being streamed through sites such as Spotify and SoundCloud, or through any other media you can possibly think of, has been copyrighted. Meaning it's likely owned by someone, and you'll need a license to use it in your game. Using someone else's copyright music in

your game without a license could end up costing you far more than just the cost of a license. This is not the time to act now and beg for forgiveness later. To add music to your video game, the first option is to create the music yourself. This is the path often taken by larger game companies that can afford to hire the requisite talent to compose an original score. Alternatively, you could get a license to synchronize someone else's music to your game, i.e., a sync license. An option you do not have is to use someone else's music or sound effects without obtaining the necessary permission first. If you do not have the funds or wherewithal to create music in-house, a sync license is the most attractive option. So how does one go about getting one? Actually, a "sync" license is a misnomer because syncing recorded music in a video game requires getting a couple of licenses from different sources. The type of music that you'll want to use comprises a number of parts, each of which is separately copyrighted and owned - the musical composition, the lyrics, the combination of the music and lyrics, and the recording. The music and lyrics (or both together, depending on who wrote them) may be owned by the artist or the music publisher. The actual recording is almost always owned by the record label. Unlike performance rights and mechanical rights (used in movies or covers) - which are mostly licensed through single agencies like ASCAP, BMI, and the Harry Fox Agency - there is no equivalent source for licensing music. This means that you have to track down the individual copyright owners of the music, lyrics, and recordings and get separate licenses from each of them, which can be a daunting task, especially for songs that are collaborations. Buying a CD or digital download of an artist's album does not come with a sync license; it generally comes only with the right to play the music for your own personal enjoyment. A good place to start is the artist's website. That will probably give you a lot of information about the music you're interested in - who wrote it, who's the publisher, the record label, the artist's rights management company, etc. If the information is not readily available on the artist's website, then you'll probably have to do some internet searching, send some emails, and make some calls. Better yet, this is a good time to get an experienced IP attorney involved who can not only locate the copyright owners, but also negotiate the licenses for you. Two birds with one stone. So how much will all this cost? Well, that's mostly going to depend on the artist and how famous he or she is. The more famous the artist, the higher the fees. A lot of licensing is handled on a percentage royalty basis, which bases the payment of fees on a percentage of sales. Other licenses might require upfront payments and minimum annual royalties. It all depends on the rights owner(s) and the context. While all this sounds intimidating and overly complicated, it really isn't. You just have to know what you want, where to find out who owns it, and who to contact to get the licenses.

Adding Music to Your Stream

The same restrictions on adding music into a video game apply to streaming the game online, whether on Twitch, YouTube, Mixer, Caffeine, or your own platform. As discussed in a prior article ([here](#)), relying on "fair use" is not advisable as that is an affirmative defense to infringement, not a right to use someone else's copyright work in your stream. If you fail to obtain the appropriate permission before streaming, the repercussions can be severe. As discussed in a previous article ([here](#)), you could be subject to a copyright infringement lawsuit (at worst), or, more likely, you could

receive a DMCA takedown request, resulting in the removal of your stream or video from the platform. And if you receive too many takedown requests, you could receive a temporary or permanent ban from the platform. The platforms' terms of service should give you a better understanding of each platform's stance on copyright infringement and takedowns. Fortunately, there are places one can get copyright-free music or sync licenses from single sources. Some platforms, such as Twitch, even offer a music library that is represented as being safe for use while broadcasting on the platform. Check to see if your platform offers this or a similar service, until you can obtain appropriate permissions for other music of your choice. Beware, however, that if the library is not actively maintained, you may still be at risk that the licenses are no longer valid. It is likely we will see increased options for streamers in the not-so-distant future as streaming becomes more commonplace and relied upon by the industry to market and sell games. At bottom, make sure you take appropriate steps to make sure you have permission from the applicable rights holders before including someone else's music in your game or your stream. This is certainly a situation in which some upfront time and care can save you a great deal of resources on the back end. Getting permission ahead of time provides you valuable certainty, not to mention comfort that later you won't be the subject of any (valid) challenges, lawsuits, or takedown notices. **That concludes our Back to Basics IP series. If you have any questions, please feel free to reach out to the authors directly. Thanks for reading, and be on the lookout for other insights on legal issues affecting game companies and content creators.**]]> ~/Libraries/CarltonFields/Media/Banners/Headers/back-to-basics-bn.jpg]]>

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