

The truth and lies about music licensing

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We all know that music is a powerful shortcut to consumer engagement.

It's a strong passion point that triggers an emotional response much faster than words or images. However, marketers often don't fully grasp how music rights work, or how they're bought for brand campaigns. This task is usually delegated to creative agencies for whom cost and risk management aren't always the top priority.

Licensing existing music tracks is a niche and opaque area. In industry jargon, it's called synchronisation licensing or just 'sync'. Marketers often uncover the truth and lies about music licensing through audits, which leads smart brands to increasingly consider decoupling this task from agencies.

Here are some of the most common audit findings and questions you need to ask in order to take better control of cost and risk.

1. Middlemen

Whilst some agencies handle music licensing in-house, most outsource it to external suppliers. However, these companies aren't always wholly independent and are often part of the same marketing services group as the agency.

Ask your agency:

- Do they outsource music licensing?
- Are the suppliers sourced through competitive tendering?
- Are the chosen suppliers affiliated to the agency's holding company?
- Is there a default preferred supplier for every project?

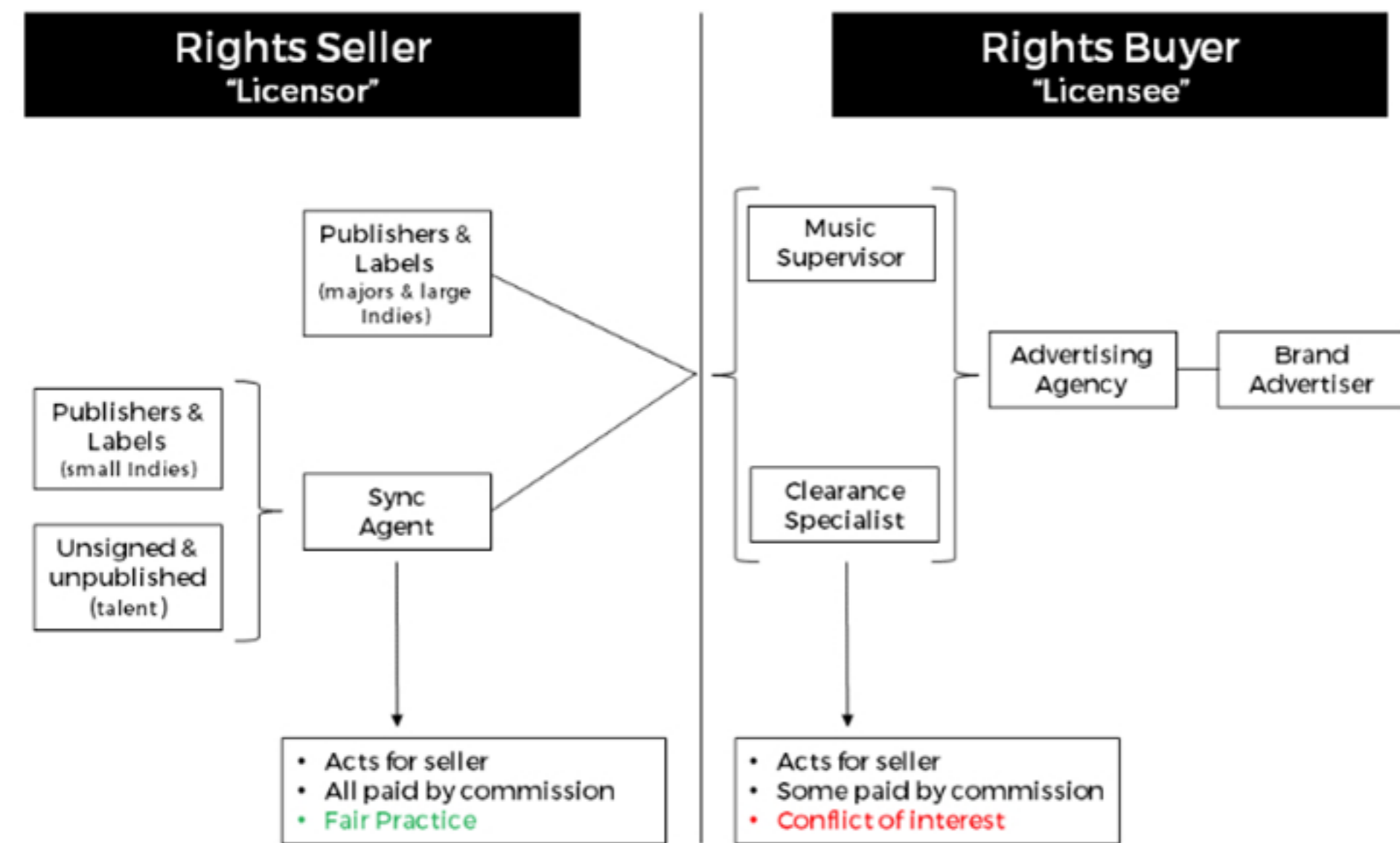
Interesting fact:

The UK sync licensing market for commercials is dominated by two players who collectively have nearly a third of the market share.

Source: [Adbreakathems.com](#) survey of 797 spots, January – December 2015.

2. Conflict of interest

Marketers engage agencies to act in the brand's best interests. Where the agency outsources tasks, that duty of care should transfer to the external supplier. However, it's common practice that the middlemen described above charge commission on the music licence fees paid to rights owners, typically music publishers and record labels. This is a clear disincentive to broker the best deal as the clearance specialists in the chart below benefit when the seller receives more money even though they're supposed to be acting for the buyer. Now that's what I call a conflict of interest!



Ask your agency:

- Is their chosen external supplier paid by flat fee or commission?
- If commission, what's the percentage?
- Has the agency challenged that business model or sought alternative suppliers?

Interesting fact:

Nine out of 12 of the UK's most active music licensing specialist companies charge commission on the deals they broker for their agency clients. Of those nine, seven charge 10% and two charge 15%.

Source: [Mystery Shopper survey of London music clearance specialists, 2015](#).

3. Due diligence

In our audit work for brands, we typically examine past campaigns where the client was aware of a music-related problem. Top of the requested list of source documents are fully executed music licences. The key phrase here being fully executed. Time and again the licences provided by the agency are either completely unsigned or only signed by the agency (the "licensee"). Without the signature of the rights owners (the "licensor"), the licence is invalid.

For every project, ask your agency to provide:

- Email correspondence with music rights owners to demonstrate negotiation
- Summary of negotiation from first offer to final fee
- Confirmation of approval of artists and songwriters
- Fully executed licences

Interesting fact:

Music rights owners will happily take brands' and agencies' money, yet still not return a fully executed licence unless chased. Securing fully executed licences is a basic due diligence responsibility for the supplier handling the licensing task.

4. Misalignment of media schedules and music licences

Existing music tracks are third party controlled IP that can only be used by brands under licence from the rights owners. These licences are not open-ended blanket agreements, but rather are restricted by the three key pillars of usage:

- TERM – the duration of the licence period
- TERRITORY – the markets covered by the licence
- MEDIA – the channels allowed under the licence

For any campaign, these parameters should be decided in conjunction with the brand's media agency and recorded in the media schedule.

It is common sense that the media schedule should be decided first, then all third party IP licences be negotiated to comply with it. Sadly, the reality is often very different, which leads to significant problems for brands.

In my book [Music Rights Without Fights](#), I explain in detail the cost and risk implications of misalignment between media schedules and music licences. In simple terms, these are:

- BUDGET WASTAGE – where rights bought exceed rights used
- INFRINGEMENT OF COPYRIGHT – where rights used exceed rights bought

The former is a cost management issue. The latter is a risk management issue which also has cost implications. Both adversely affect the brand's business.

Ask your media agency:

- Can they clarify and finalise the media schedule before campaign production?
- Can they stick to the schedule and not change it?
- If not, why?

Ask your creative agency:

- Will all third party IP be licensed to comply with the media schedule?
- If not, why?

Interesting fact:

Misalignment of media schedules and music licences is the most common reason for music-related legal claims against brands.

Key takeaways

Music licensing is an area that most marketers don't consider until it goes wrong. When it does, it's not uncommon for both brand and agency to receive legal claims from music rights owners which can lead to the following:

- Campaign forced off-air
- Wasted media budget
- Punitive damages
- Reputational damage
- Distraction from day-to-day duties for marketers
- C-suite and legal investigate marketing

With careful planning and expert guidance, all the above can be avoided – though this requires that marketers educate themselves on how music rights work, and how they're bought.

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