

Glossary of Electronic Media Use of Music Terms

The AFM held a two-day symposium on uses of music in March 2011.

Sponsored by RMA, the symposium brought together AFM Officers, staff, and staff and other representatives of Locals 802 (New York), 257 (Nashville) and 47 (Los Angeles), the Film Musicians Secondary Markets Fund, the AFM & SAG-AFTRA Fund, and RMA rank-and-file musicians.

This glossary was created for the Use of Music Symposium. Many thanks to Phil Ayling for the creation of this glossary, and to each of those who helped review, and have helped update it over time.

The participants included Ray Hair, Ken Shirk, Dick Gabriel, Pat Varriale, Idele Beltzman, Alisa Childs, Pedro Marroquin, Andre Shavers, Addison Granillo, Matt Allen, Miles Hamilton, Vada Hedgeman, JoAnne McGettrick, Shari Hoffman, Dennis Dreith, Colin Gilbert, James Cope, Chris Kuhrt, Vince Trombetta, John Acosta, Gordon Grayson, Tahuhi Mirzoian, Teri Barnett, Steve Danenberg, Marc Sazer, Bruce Bouton, Jen Kuhn, Phil Ayling and Greg Goodall.

1. New Use

When music recorded under the terms of a specific Electronic Media Agreement is later used as product or content governed by a different Electronic Media Agreement a **New-Use** is created and payment is due. This Employer New-Use payment to musicians is for the further exploitation of their musical labor from one agreement medium to another.

Example 1: if an AFM Sound Recording is licensed by a record company to be used in a Motion Picture, musicians attached to the Sound Recording receive New-Use wages (and often other benefits) for the New-Use into the Motion Picture.



The “Source Agreement” for the music (in this example the Sound Recording Labor Agreement) generally specifies how and under what circumstances a New-Use payment is due to musicians, and the general terms governing the New-Use. Then the “Destination Agreement” (in this case the Motion Picture Agreement) can further define the specific wage scales and other benefits (such as pension or residuals) which are due for the resulting New-Use.

The Employer attached to the Destination Agreement almost always makes the New-Use payment, but the original Employer under the Source Agreement is ultimately responsible for payment if no Assumption Agreement (transfers of obligations from Source to Destination Employer) is executed. The Assumption Agreement also specifies transfer of payment obligations for other possible musician benefits like pension or residuals which will be handled by entities other than the Federation or the Local.

Except for Soundtrack and Broadway Cast Albums or certain specified Jingle New-Use (all of which are processed and billed by the Local) all other New-Uses are processed and billed by the Federation at 15% (12% in Canada), with a small portion being returned by the AFM to the Local where the work originally occurred.

SAG-AFTRA often uses the term **Conversion** or **Re-Use** for purposes where the AFM uses **New-Use**.

2. Re-Use

When music recorded under a specific Media Agreement is used again within that same medium a **Re-Use** occurs. Generally, Re-Uses require additional Employer payments directly to musicians, though not always. An example of “free” Re-use under the Sound Recording Labor Agreement occurs with the re-mix of an album, or releasing a version with English lyrics and another version with Spanish lyrics. An example of “free” Re-Use under the Motion Picture Agreement is the creation of special edits or excerpts of a film for purposes of promotion or review.

Though the terms are somewhat modified from agreement to agreement, paid Re-Use most commonly occurs under the Live TV/Videotape Agreement (also called **Replay Rates**) and the Commercial Announcement Agreement (also called **Jingle Cycles**). Like

New-Use payments, Re-Use payments generally include Pension contributions, but unlike New-Use, Re-Use often includes H&W contributions as well.

Live TV Re-Use occurs when the David Letterman Show or Saturday Night Live, as examples, are rebroadcast. Live TV also contains a particular type of Re-Use attached to Foreign Broadcast as well.

Jingle Re-Use can occur in the form of Re-Use Cycles (13 weeks; 52 weeks etc.,) or also as a Re-Use for introduction of the Jingle into a New Region or the re-activation of a Jingle which has gone unused for 2 or more years.

Re-Use Payments and Work Dues are usually collected and processed by the applicable Local, with a defined portion of the Work Dues (depending on the Agreement) going to the Federation.

Note: SAG-AFTRA often uses terms like **Residuals**, **Residual Base** or **Use Fees** in areas where the AFM uses the term **Re-Use**.

3. **Clip-Use**

These are indirect Employer payments to musicians, which are collected and distributed by the Federation. The payments are usually quite small because they are often lump sum payments (\$750 for example) that are then divided amongst all musicians attached to the clip— be it one musician or one hundred. Clip payments are distinguished from Re-Use and are most prevalent under the Live TV/Videotape Agreement or the Motion Picture and Film TV Agreements. Clip payments are rarely attached to residuals, pension or other benefits under the Motion Picture or Film TV Agreements, but that can occur under Live TV/Videotape.

- a. **Live TV/Videotape Agreement** examples of Clip-Use might be excerpts from previous Tony Awards broadcasts being placed into the current Tony Awards as retrospective — or a primetime Saturday Night Live special using “Clips” from previous SNL seasons to create a tribute to Will Farrell. Clip-Use under Live TV is usually free for the first Clip and there are other types of Clip formulas in play when the entire show is a compilation of Clips. When excerpts are taken from films produced under the Motion Pictures or Film TV Agreements and then placed into a Live/Videotape TV program those pay under a formula more akin to New-Use though it is referred to as Clip-Use under the Live TV/Videotape Agreement.
- b. **MP and Film TV Agreement** Clip-Use occurs when a bit of music (2 minutes or less; with or without original visuals) is taken from one TV show or movie and placed in another film. For example, music from an episode of The Simpsons being used on the score for Family Guy generates a Clip Payment to musicians who worked on the particular Simpsons episode in question.

Clip-Use Payments and Work Dues (15% U.S.) are processed and collected by the Federation. Clip formulas are often very inexpensive for Employers and unfortunately the AFM has sometimes inappropriately allowed Clip payments to be made in lieu of the

required Re-Use or New-Use payments.

4. **Cycles, Dubs and Conversions**

These are all specific terms found in the Commercial Announcements Agreement.

- a. **Cycles**, as previously noted, are a particular type of Re-Use payment that allows for unlimited exhibition of a commercial in a particular medium for a specified period of time.
- b. **Dubs** can be used to describe the number of commercials which may be produced from a Jingle recording session, without additional payment; or the additional payment required when you extract more jingles from a session than the maximum allowed under the applicable session length. A jingle session includes both a **Session Fee** and an **Initial Use** or **Initial Cycle Fee** (generally 13 weeks of use)
- c. **Dubbing** also describes a Re-Use payment that allows music used in a prior commercial to be adapted for use in subsequent commercials.
- d. **Conversion** describes a New-Use payment for commercials used in different advertising media. For example, music originally recorded for a TV jingle being placed into a Radio commercial.

5. **Protected Uses Under Other Agreements**

The AFM “Major” Media Agreements are the Sound Recording Labor Agreement (SRLA), the Commercials Announcements Agreement (Jingles), the Television Videotape Agreement (Live TV), the Theatrical Motion Picture Agreement (MP) and the Television Motion Picture Agreement (TV Film). In addition to those, there are many other “Minor” Media Agreements:

- a. **AFM “Minor” Agreements** cover Cable TV, Educational Television, Public Radio, Industrial Films, Independent/Festival Films, Videogames and other areas. These agreements generally provide for a similar range of New-Use and Re-Use wages and protections as found in the major AFM Agreements. There are differences, but these “Minor” Agreements are generally tied to the most similar Major Media Agreement with regards to terms and provisions.
- b. **Demonstration Agreements (“Demos”)** are created and administered by Locals rather than the Federation. These Agreements are designed to allow songwriters, composers and performers to “shop” material for the purpose of selling songs, securing record deals, auditioning a theme for a TV show or movie or securing a grant or scholarship. While not uniform in scope or language these Local Agreements provide (or should provide) protection and payments terms for musicians in the event that a prospective employer wants to later release the material originally recorded as a “demo” in an area covered by one of the Federation’s Electronic Media Agreements.

6. Music Preparation

Musicians who perform services such as Arranging, Orchestrating, Copying, Proofreading, Midi-Transcription and other Music Preparation services are also party to many additional payments and benefits similar to those to which instrumentalists are entitled. There are some differences however:

- a. Music Preparation musicians are originally paid based upon an applicable Page Rate or sometimes an hourly rate; not a Session Fee. Accordingly, Music Preparation New-Use and Re-Use Payments are similarly based on applicable page rates or a percentage of the scale wages which were originally earned. Payments for Clips are allocated by the Federation based upon the size of lump sum payment and the total number of Instrumental and Prep Musicians attached to the Clip, unless another formula is agreed upon.
- b. There are also some instances of unique New-Use payments only for Music Preparation musicians. As an example; a Sound Recording is done for a Josh Groban album and later Josh Groban does a Live TV or PBS Special. When those “Sound Recording” charts are used for the first time by the band on the TV Special, the “Sound Recording” music preparation musicians are entitled to a New-Use payment under the applicable TV agreement.

7. Fund Payments

Musicians (including those working in Music Preparation) also receive payments through various Funds. Depending on the particular Fund and the agreement being administered, payments may also be paid to musicians appearing in images as performers (sidelining).

While they each operate somewhat differently — depending on the governing Trust Document — each Fund administers all collections and distributions independently from the Federation or its Locals. All operating costs, including legal and contract negotiating expenses, auditing expenses and Employer taxes are borne by the respective Fund Participants. Those expenses are all deducted prior to distributing money to musicians and the respective distributions are not subject to Work Dues. Depending on the particular year and particular Fund, those expenses range between 20%-35% of Gross Receipts. The principal Funds are:

- a. **The Sound Recording Special Payments Fund (SPF)** provides money to musicians from Employer Payments made to the Fund based on sales of Sound Recordings, Music Videos and Concert DVD’s. There are various distribution formulas depending on product being made and whether distribution is Digital or Physical

The **SPF** also distributes a particular type of New-Use Payment call a Sampling Payment. Those payments occur when a portion of an existing Sound Recording is digitally embodied in the creation of a new Sound Recording. This is an employer operated and controlled Fund with AFM liaisons.

- b. **The AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund (AFM & SAG-AFTRA Fund)** distributes money to Instrumentalists and Session Singers pursuant to a wide variety of agreements including various US Digital Performance statutes, and foreign collectives like Geidankyo in Japan as well as royalty collectives in Spain and the Netherlands among others. This Fund collects money for the sale, rental, broadcast or webcast for Sound Recording or Audio Visual material as applicable under each respective agreement.

This is a Union-controlled Fund supervised by AFM and SAG-AFTRA Trustees, though neither union is responsible for operating costs.

- c. **The Film Musicians Secondary Markets Fund (FMSMF)** distributes money to musicians attached to obligated Motion Pictures and TV shows for Secondary use of that product. Primarily this money is collected when Theatrical Films are sold on DVD or broadcast on Free TV or when Network Film TV shows are sold on DVD. The Fund also collects and distributes money for certain cable shows, direct to video product or in-flight exhibition as well as New Media exhibition (see below). This Fund also administers certain products under the Live TV/Videotape Agreement.

This is an Employer controlled entity with AFM liaisons.

8. **New Media**

As used in AFM-land, New Media deals with the exploitation of our traditional products in new market places and also the creation of Electronic Media specifically designed for New Media Platforms. This includes the distribution of Original New Media Product as well as the distribution of traditional Sound Recordings, Motion Pictures and Television Shows through Internet Web Sites.

This is accomplished through rental, download sales and other types of on-demand consumer access.

In addition to Internet access, which drives Home Entertainment Centers, New Media Distribution also includes computer-enabled personal consumer devices, which may have dedicated content or may be designed for portability with on-demand access to Internet content.

New Media is also used to refer to new products such as Ringtones and Ringbacks, Interactive Media, Music in Greeting Cards, Toys and other devices being developed.

What is “New” now may become “Traditional” soon enough. This represents a big challenge to us along with all of the Entertainment Guilds. In addition we are also grappling with finding the right mix between paid New Media and allowable promotional uses. As found in our major agreements New Media can be summarized as follows:

- a. **Sound Recordings**

The advent of New Media has resulted in payments for Singles (in a digital format) being reintroduced into the Sound Recording Labor Agreement.

Musicians now receive money for the sale or rental of Sound Recordings on-line

(Digital Distribution). Those moneys are collected and distributed by the Special Payments Fund (SPF). The SPF also collects and distributes moneys for the online sale of Music Videos and Concert DVD's, though the Federation is responsible for the collection and administration of New-Use fees for the creation of those products, if applicable. Payments for Ringtones and Ringbacks are administered by the Federation. This Agreement is currently in negotiation and some provisions are currently subject to dispute and future bargaining.

b. Commercials

The AFM currently has terms in place governing the creation and exhibition of commercials in New Media, though as a practical matter much of that will be shaped by an ongoing study of New Media Commercials, which is currently being undertaken by Industry and SAG-AFTRA. That study will form the foundation for upcoming New Media bargaining between Industry and our Sister Guilds and later for us.

- c. Motion Pictures and Film TV** have fully fleshed New Media Agreements. They include terms for Original New Media Productions and Derivative New Media Production (for example "The Bart and Lisa Show" as a Derivative Production from "The Simpsons"). These agreements are governed by the Federation and include provisions for H&W and Pension.

Residuals or money for Secondary Exhibition of these productions is administered by the Secondary Markets Fund; including Ringtone and Ringback monies. The Secondary Markets Fund also administers residuals generated for the New Media Exhibition of traditional product (Theatrical Motion Pictures and Network Film TV, for example) when those products are made available for on-line sale or rental.

- d. Live TV/Videotape** only recently negotiated appropriate protections or language governing New Media Exhibition or Production, and those provisions remain to be summarized here.