

From "One Music How To...Clear Samples"

<http://www.bbc.co.uk/radio1/onemusic>

Clear samples - Introduction

If you've used a sample in your track and you've got plans to release it then getting it cleared is vital. Many, many artists have paid large amounts of money for not getting permission for their samples before they got big.

If you do it early enough getting clearance can be a lot easier than you think. And it will cost less.

This section takes you through the process including:

- I The law
- I Misconceptions of sample clearance
- I Using companies to do it
- I Finding who owns the copyright
- I Approaching the copyright holder
- I Re-recording samples
- I Costs
- I How long it takes
- I Sampling speech

The Law

If you include a sample of someone else's music in your own work you are infringing two copyrights.

The first is the copyright in the actual recording, which will usually be owned by the record company which originally released the track.

The second is the copyright in the song. This will be owned by the writer of the original tune or, more likely, their Publisher.

In order to use a sample legally, you need to have clearance from the owners of both copyrights.

How Not To Clear A Sample

There are a lot of misconceptions about clearing samples. Here's some:

| You cannot clear a sample by re-creating it (more on this later)

| Altering the sample (speeding it up or adding a few effects) does not get you out of clearing it

| It doesn't matter how long the sample is. It could be two seconds and you'd still have to clear it.

| Sampling a track which already cleared its samples doesn't get you out of clearing them.

"A general rule of thumb amongst copyright owners is that if you ask people's permission they're amenable - as long as the clearance terms are accepted. I'd say that seventy to eighty percent of the time samples get cleared."

Alison Hook - Sample and Infringement Manager, EMI Music Publishing

Using Companies

So, faced with clearing a sample, the first choice you have to make is whether you're going to do it yourself or get someone else to do it for you? If you're signed to a record label or publishing company they may do it, although sample clearance is usually the artist's responsibility. If you don't have that luxury, you could use a specialist sample clearance company.

Such firms usually charge around £300 to clear each sample and will also offer legal advice about any contract you may have to sign with the sample's owner. This fee is in addition to any money that you have to pay the copyright owners. The benefit of using a specialist company is that they may be able to cut you a better deal with the sample's owner, in terms of what you have to pay to use their music. "I wouldn't recommend that a novice deals with American record companies and publishers - they're real hardballs. They can be really scary even for someone like me."

Sarah Blain - Consigliari (sample clearance company)

Finding Out Who Owns The Copyright

Getting in contact with these copyright owners is quite straightforward thanks to the MCPS . MCPS (Mechanical-Copyright Protection Society) is an organisation which administers and protects musical copyrights for its members in the UK , who include virtually every record label and publisher you can think of.

If a record has been released in the UK, MCPS will have up to date information about who owns what and how to get in contact with them.

As well as giving you contact details for copyright owners, the MCPS's sample clearance team will also talk you through how to approach these people and what information you will need to

provide to get your sample cleared. Although they won't help you negotiate with them. See 'How to... MCPS' for more on how MCPS works. "We try to make people aware that it's not some horrible daunting task."

Emma Cummant - Sample Research Officer, MCPS

Approaching The Copyright Holder

Dealing with big companies for sample clearance is quite straight forward. EMI Music Publishing, for example, has an online service for sample clearance and its sample clearance contract is being adopted as an industry standard. The EMI site also provides general advice about sample clearance. The more people involved in a record's creation, the more copyright owners you may have to track down and deal with. If the record you sampled was co-written by two or three people, you will have to track them all down and cut a deal that each is happy with. Once you have the name of the publishing and record companies, call them up.

You can get their number from their website, from a music directory (see list).

Phone them and find the name of the person that you need to write to for clearance. Make sure you get a full address.

Make things as simple as possible for them. Make up a CD with both your track and the track that you've sampled on it. Give the times in each track where the sample occurs. Mark everything you send with your contact details - including the actual disk.

Send it off with as much information about your planned releases as you can. In particular, make sure that you state which label the tune will be released on and how many copies will be pressed. Help them reach a decision quickly without having to come back to you for more information.

By law, they are under no obligation to give it, or to provide any reason for not doing so. Whilst a record company or publisher may be willing, a lot of the time the ultimate decision is up to the musicians themselves. "Most of the time they say 'yes' but sometimes we contact a writer about clearing a sample and just never hear back."

Alison Hook - Sample and Infringement Manager, EMI Music Publishing

Re-recording a Sample

Unfortunately, on the publishing rights side of things, if someone says 'no' and refuses consent it's pretty much the game over for your sample clearance: legally speaking you won't be able to proceed even if the people who have the recording rights have said 'yes'. However, if you get a 'yes' from the publishing rights owner but a 'no' from the recording rights owner (or they're asking for too much money), there is a course of action open to you.

You can re-create the sample by playing it yourself or getting someone else to perform it for you (there are companies who specialise in this). That way, you're not using the actual recording and so you're not infringing the record company's copyright.

This doesn't get you out of the need to do a deal with the publishers, but it frees you from needing the record company's permission.

"We usually get approached because someone's asking silly money to clear a sample. But, often it's also because of the time factor: it can take six months to get in touch with people and then you have to negotiate with them. Particularly with dance records, people might lose a hit if they wait that long."

Steven Gibson - Co-owner, Rinse (sample recreation company)

Costs

There are several factors which affect how much you'll have to pay:

- | How successful the artist is you've sampled
- | If they have a publishing deal
- | How heavily your tune relies on the sample
- | Size of your release
- | How successful your track has been already

Sampling from a small label artist

A small record company may want a flat fee, known as a 'buy-out'.

If you've sampled a relatively unknown tune and it's quite a short release (a few thousand singles) you might end up paying as little as £500. They may build in a condition that another fee is payable if you want to press more records.

Sampling from a large label artist.

A larger label or bigger artist may want a royalty - usually 1 to 3 per cent. They'll probably want an advance against that which, for a major artist, may be several thousand pounds.

Depending on how you want to work, you may be able to reduce the royalty by paying a larger advance. Alternatively, if you can't afford to pay a big advance, you may have to reduce your long term profits by offering a larger royalty.

If the sample is used a lot

If the sample is extensive and underpins your tune to such an extent that the track won't really work without it, then you're in a weak bargaining position. The other record company can demand a much higher royalty - as much as 50% in some cases.

Published samples

Publishing companies will want a royalty but not normally an advance. For light usage of a minor artist this can be less than 10%. For a larger artist it may be 50% or more - up to 100% if it's

someone huge and you've taken a big slice of their tune.

Where it gets really messy is if the tune is co-written by two or more people who have different publishers. You can find yourself having to negotiate with more than one company and having to come to an agreement that everyone is happy with.

How it affects your royalties

The royalties for samples will be deducted from your publishing royalties. You may also have to give up some of your Performer's Royalties to the people who performed on the record you sampled. See 'How to... PPL' for more on that.

Clearing for other uses

When clearing a sample, it's important that you clear it for all uses throughout the world and not just for the sale of records.

A record company wanting to sign your hot dance single will also want to be able to license it for use in films or advertising.

They won't want to have to go back and clear the sample for further usage at a later date.

Clear The Sample Early

The potential cost of removing an uncleared sample once a record has been released is enormous and your bargaining position with the copyright owners is extremely weak.

They may sue for damages as well as demanding some or all of the profits from the record.

They could obtain a court injunction preventing the record company from selling the record. If they succeeded in that, then your label would have to go to the time and expense of recalling any copies in the shops and re-pressing the record. The bill for all this lands in your lap.

Under the terms of your record deal, your record company would have the right to come after you to recoup their costs (and their legal fees). That's not great news for an impoverished musician, so trying to get away with it really isn't wise. "Universal said that the writers regard their work as being very important to them and they're not about to see it used by someone unless they're properly compensated. So they've actually claimed 90% of the publishing and Panjabi's only getting 10%."

Dennis - Menace Music Management (on clearing the sample in Panjabi MC's 'Mundian To Back Ke' after it became big)

How Long It Takes If you've done a decent job and made it easy for people, you should be able to clear both copyrights within a couple of weeks. The major hold-up is likely to be in obtaining the artist's permission. It's likely that the publisher, and maybe also the record company, will need to make sure the artist is happy to be sampled. Even if they don't have to, they may ask

anyway in order to keep a good working relationship. If the artist is on tour then it could be tricky getting a copy of your tune to them for their approval. If the artist is based abroad then there may be a time-lag while people from the UK negotiate with the artists through overseas companies and lawyers.

Sampling Speech

Using a sample of dialogue from a film or television programme will also require clearance. This is very hard to obtain, especially with films. Hollywood is very protective of its product, so a film company may simply refuse outright or demand such a high fee that it's not feasible to release the song. It's a similar case with TV.

As with music, there are two copyrights to clear, one for the script and one for the recording of it in the film. So getting a friend to re-read the dialogue will not get you around the problem completely.

This is further complicated by the fact that actors often have clauses in their contracts which give them the right to be consulted for uses like this. That means more time and expense when trying to get things cleared.

In short, the whole business is pretty much impossible. That's reflected in the extremely small number of records that you hear using samples of film and TV dialogue. If it were easy, a lot more people would be doing it.