

Licensing music for inflight entertainment

Current market guidelines



The licensing of music content and services for use by airlines in their inflight entertainment (IFE) has been experiencing a period of unprecedented change in recent years, which has impacted all parts of the IFE market.

The major record labels, in particular, have taken the initiative to challenge and fundamentally change the way their music is licensed and valued. The development of IFE digital interactive music services is seen as analogous to other digital music services and has determined that a different, new approach and valuation of licensing is required. They record labels have also recognized the potential of the market in terms of artist access, new music content and increased revenue streams.

Kemplay Consulting leads the IFE industry in understanding music rights, the licences required and the impact of the recent changes for the supply of music content and services to airlines.

This document provides a set of new content and guidance to help explain music rights and to give understanding and insight into the current approach of music rights owners to the licensing of their rights. It will direct and support content service providers, IFE systems providers and airlines in fully understanding the music rights licences they should have in place and the changing licensing landscape that they should now be operating under.

The focus is on IFE audio music and music video content and services.

Music is of course a key component of film, television and gaming content available on IFE services and also needs to be licensed appropriately. Overwhelmingly though, this audio-visual content will be provided by the content owner/distributor with the use of the underlying music licensed for IFE, except, importantly, the performing rights for the onboard delivery and use by passengers, which will need to be separately licensed by the airline.

What is there to learn

There are some key take-aways from the content and guidelines provided in this document.

Historically, and this is not something unique to the IFE industry, music rights and the licensing requirements to use music have looked complex, rights owners have not always been easy to work with and licence fee values have been relatively low, which has led to a disengaged and light touch approach and a fair amount of “hoping it will just go away”!

The key guidelines are:

Copyright is important	Do not use music without it being licensed. Get it right and avoid the suffering of potential infringement claims and the need to remove and lose access to music.
It can be complicated	Particularly where multiple pieces of content are being produced for multiple media platforms for use on a number of airlines but

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	with appropriate licences in place, it is straightforward to manage and administer thereafter.
Communication is key	Maintain a dialogue with music rights owners as music services are expanded and developed and that will allow licences to be revised and build to support new business models.
The best licences provide the best access to music	Good licences will provide assurance to the ongoing use of music and an understood and transparent basis for doing so and will see music rights owners prepared to provide better access to music and artists.
Build new relationships & new opportunities	The music industry is increasingly interested in the way music is and could be used in IFE services. Engage with it and get the benefit of support to launch new content services and business models.

A little history of why we are where we are

The industry had been predominantly licensing music rights through a collection of licensing agreements with collective rights organisations on a territory by territory basis.

There was poor awareness, consideration and communication between the IFE industry and music rights owners to how these licensing arrangements worked and if they remained suitable and properly valued.

There were a myriad of problems and licensing “gaps!” and change was needed.

Audio and especially AOD, has been a low-cost solution to increase IFE count and rights owners have long argued fees did not reflect the change in functionality of onboard systems. As content onboard came to reflect that of digital music services (such as Spotify) with increased library content and extensive interactive capabilities, the rights holders have taken a closer look at how they should approach licensing content onboard.

In October 2013 Sony Music took legal action against United Airlines and its’ CSPs regarding the onboard use of Sony Music catalogue and Universal Music followed this up in early 2014 with further action against other airlines and CSPs in the USA.

Since then, airlines and CSPs have been subject to the threat of litigation from music rights owners, settlements have been reached, rights have been withdrawn from the music rights organisations which had been licensing them and access to music and its availability for interactive on demand IFE services have been restricted.

Rights owners (and the record labels in particular) now want to license their rights directly, ensure the whole IFE experience is properly licensed, secure a proper value for the use of their music and

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require the industry to operate under similar terms to the digital music services they license in the provision of data and rules on music usage.

How the licences are developing

Change	From	To
Who an airline or CSP licences with	Third party music rights organisations representing record labels and music publishers (separately) on a collective and mandated basis.	Direct licences with the major record labels and label distributors and music publishers, supported by smaller deals with rights organisations for the remaining rights owners
Rights licensed	Mechanical rights to cover the audio production process with a CSP and performing rights with the airline.	All mechanical and performing rights involved in the audio production process to on board usage by the airline, to include the integration process.
Content covered under the licences	Audio only linear broadcast programming and some interactive and AOD services.	All types of linear and on demand audio and video services via any type of onboard delivery format or system. Will include artwork/images.
Territory	Agreements with territorial gaps and limitations.	Genuinely global licences covering full production, delivery and onboard use and access to label catalogues.
Pricing and agreement support	Various pricing models, lacking consistency, transparency and value to rights owners.	Standard model licensing for major labels and music publishers including increased value for more rights.
New service opportunities	A slow uncertain route to get extensions to agreements.	Direct and immediate access to the rights owners, with an interest in service development.

IFE music content and the music rights which need to be licensed

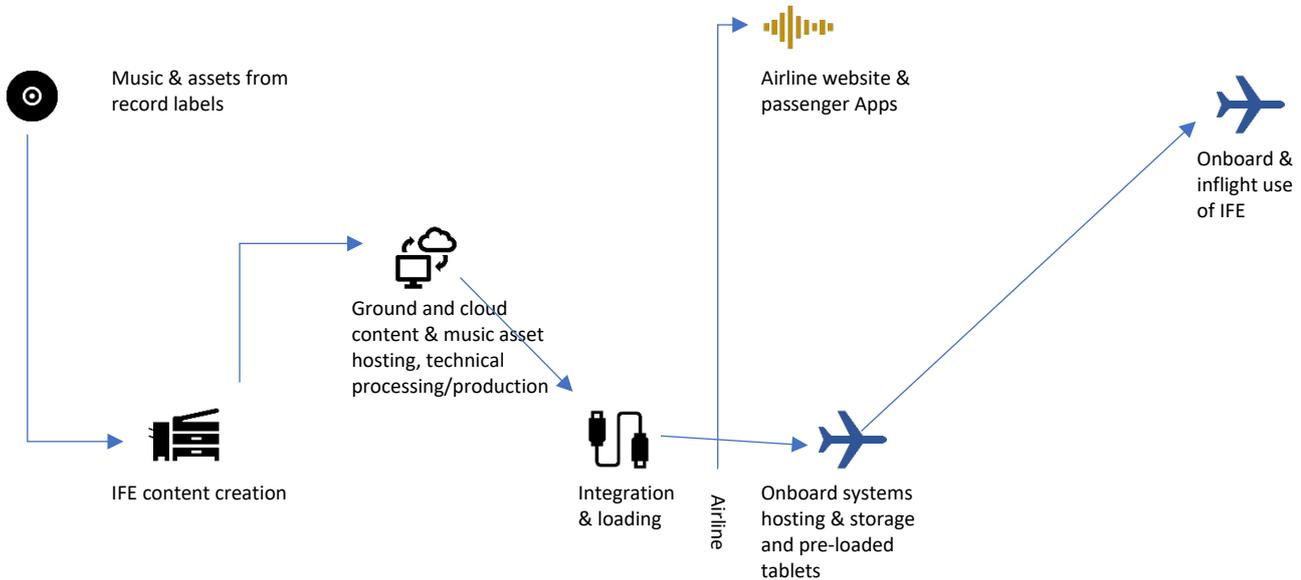
Any type of audio music and/or audio-visual music content produced for IFE or in support of IFE services and using music will need to be appropriately licensed.

The diagram below provides a summary look at which music rights will need to be licensed and the key licensing issues and considerations to be aware of.

This therefore covers music used in music programming, AOD (& VOD), boarding music, pre-loaded tablets, passenger apps, websites, trailers and corporate promotions.

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<p>Rights: There is a bundle of music rights which need to be captured under licence to cover the whole content sourcing to onboard usage of the music. In aggregate this should cover: mechanical, distribution, dissemination, public performance and communication to the public rights where both physical and digital file content is being produced and used.</p>		
<p>Territory: Each territory where any of these processes occurs will need to be included within a licence (or series of licences) arrangement. This means that in most instances multiple territories will need to be covered under licence. The applicable territory for the onboard storage of IFE music content on the aircraft systems and its use during flights is industry recognised as the territory where the airline is registered/principally based.</p>		
<p>Licences: The preferable licensing route is for a direct licence with the music rights owner which covers all the necessary rights and territories for the full end-to-end use. This is what most record labels now provide and what music publishers are increasingly moving towards. Alternatively, a patchwork of licences will be needed (most probably from separate music rights organisations) to provide joined up coverage of the required rights and territories.</p>		
<p>Licensing responsibility: Ordinarily this would be either the music content producer and/or the airline depending which type of licensing is secured. Where separate licences for different parts of the content usage are put in place, then warranties should be put in place to ensure the necessary rights and territories have been secured from the supplying party.</p>		
⚠	Rights	It can become complicated to map and correctly capture the necessary rights for each part of the process from sourcing content to onboard usage. Sometimes rights can be differently captured or referred to under local copyright law and/or the licensing party might not correctly understand the technical process for the use of the music and/or all the rights might not be available through the licensing party.
⚠	Territory	Many music rights are represented and licensed on a territory by territory basis and this can be challenging where a licence is set to cover a number of airlines in different territories and where the production and delivery process involves multiple territories.
⚠	Licences	It can be difficult to put together a patchwork of licences to cover the full content sourcing to onboard usage and, usually, this sees the existence of licensing gaps for parts of the process and/or parts of the rights and/or territories.
⚠	Licensing responsibility	This can fall down where there is not a clear understanding of the licences required and/or who is taking responsibility. For example, an airline with its own licences in place to cover the onboard use of the music content should have a warranty in place with the content supplier that it has properly licensed its

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		handling of the music and its purpose of use. If the content owner has not effectively done this, then the airline can still be open to secondary infringement claims.
	Compliance audit/check & new licensing practice	A compliance audit/check is a good way for a content provider and airline to ensure that its current use of music content in IFE is fully licensed and there are no licensing gaps and potential legal exposure. It also provides the opportunity to assess existing licences and identify and step up to better licensing options to secure more inclusive, all-encompassing and transparent licences.

Licensing parties and approach to licensing

Licensing music rights for in-flight entertainment (and indeed most content/media) has traditionally been determined on a territory by territory basis and in relation to, separately, mechanical and performing rights, through agreements with music rights organisations, representing the rights and interests of the record labels and music publishers.

It can be relatively straight forward to set licences up on this basis in relation to one airline and where the content is produced and delivered in the same territory.

However, as the types of in-flight entertainment services (and particularly in relation to the availability of on demand services) and the production and onboarding processes have developed, this traditional approach to licensing has proven to be more and more ill suited to the requirements of all parties: content and technical service providers, airlines and the rights owners themselves.

The table below shows this traditional approach:

	Standard outcomes	Mechanical		Performing		
		Record Label	Music Publ.	Record Label	Music Publ.	
Territory On a per territory basis in respect of the separate licensable activities (and often per airline)	Territory A	Separate music rights organisations.		Separate music rights organisations.		Licensing entities
		Differing tariffs.		Differing tariffs.		
	Territory B	A mix of music rights organisations and direct rights owner licensing.		Multiple rights organisations.		
		Differing tariffs.		Common approach to licensing but different tariffs.		
	Territory C	No music rights organisations established & some direct local rights owner licensing.		No music rights organisations or tariffs established.		
		Tariff & licensing terms				

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Since early 2014 (and particularly through 2016) there has been a fundamental change in the approach to licensing music rights for inflight entertainment, driven predominantly by the record labels and (to a lesser extent) music publishers.

This has seen music rights owners deciding to license directly, rather than through third party music rights organisations, and for multiple territories/globally and for inclusive rights packages.

The table below shows this new approach:

Record Label		Music Publisher			
A	B etc.	A	B etc.		
Preference is to license all rights required in package and for multiple territories.		Multi-territory all rights licensing approach.		Mechanical	Key Rights
		Predominantly still through local rights organisation but moves to mirror label approach and license direct.		Performing	
Increasingly direct with record label or their digital platform distributor.		Increasingly direct with major publishers; some still through music rights organisations.		Licensing entity	Licensing approach
Common rate card developed and used by most labels; or annual lump sum or per track/album.		Common approach to licensing developing but not as advanced or consistent as record labels.		Tariff & licensing terms	

It can be argued that this is essentially an exercise in re-cutting the cake and that just as many licences are required and there are as many issues to contend with. But there are key and positive developments, providing new more effective and efficient licences, with inclusive rights packages and consistent and transparent approach to tariffs and licensing terms. This is a better solution to the alternative and historic patchwork of licensing parties per territory with difficulties aligning rights, values and terms.

However, this conversion to direct and inclusive licensing is not yet fully embraced by all music publishing rights owners and many still require (for the time being) their rights to be licensed on the traditional model.

New licensing tariffs

The table below shows the new and standard rate card structure of new music rights costs for *free to passenger services*, which many of the worlds’ record labels and some music publishers have put in place with a number of content providers and airlines. This now establishes the predominant basis on which music is licensed for in-flight entertainment.

The fees will usually cover all mechanical and performing rights required.

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Monthly costs are calculated using a fixed rate per aircraft, which varies depending (i) on the aircraft capacity (ii) the type of music services on board (iii) the usage share of music used. The fees increase to cover more service categories licensed and greater aircraft passenger capacity.

Where paid services to passengers or those supported by advertising are being provided, music rights holders will usually seek to license these on a percentage of revenue basis, subject to minima.

IFE enabled aircraft (seat capacity)	On board in-flight music services categories			
	(i) Linear music and boarding/disembarkation	(ii) Interactive 'Radio' & (i)	(iii) Full AOD & (i) and (ii)	(iv) Full VOD & (i), (ii) and (iii)
< 100				
100 - 199				
200 - 299				
300 - 399				
400+				
Per pre-loaded tablet				

Where a music rights owner does not license using the new standard rate card, they will either:

- (Typically record labels) - License directly on a different basis, most usually an annual lump sum fee or a fee per number of tracks/albums used.

Details of record label contacts – IFPI (<https://www.ifpi.org/national-groups.php>)

- (Typically music publishers) - Mandate a rights organisation to license their rights collectively with other rights owners in a particular territory or region. There are many and varied approaches to licensing and the relevant music rights organisations in the territory where the rights are being used/exploited should be contacted to establish who to deal with.

Detail of music publisher contacts – CISAC

(<http://members.cisac.org/CisacPortal/annuaire.do?method=membersDirectoryHome>)

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Benefits of the new licensing landscape

There are many benefits to the new licensing rules and they reflect the growing and direct interest that the record labels and music publishers are taking in the IFE market and the increasing value it offers them.

Broadly these benefits will provide:

- Full access to vast international catalogues of music and direct support on catalogue knowledge, new releases and what is happening in local music scenes.
- Inclusively license all parts of the content supply, through to on board delivery and use by an airline, including third party programming contractors and technical services like integration on a multi-territory/global basis.
- Provide greater opportunity to get licence amendments (new services or territory etc. included) and done more quickly.
- Create more transparent and consistent licensing terms across a music rights owners' repertoire.

The positive changes mean content providers and airlines will get fully rights assured, safer, simpler and better supported licences that will enable the provision of a wider choice of music and other digital assets and the opportunity to support more creative on board music services.

What happens next?

There is never an end to the road in relation to licences, their value and how they operate.

The new standard rate card and approach to licensing sets out the new and current approach and the expectation is that the remaining music rights owners (predominantly music publishers) will increasingly move to the same model. This will further simplify the set of licences required, their operating terms and administration.

However, as new types of IFE music services develop and/or the basis on which music rights owners manage and represent their rights changes, then new licensing models will emerge and regular review and communication is vital to ensure that licences remain appropriate and the IFE industries do leave themselves exposed.

The importance of copyright

The US Constitution says it is "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" and the UN Universal Declaration of Human Rights says "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

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Michael Childers' article 'A Tutorial On Music Royalties in IFE' ('Avion' magazine Q2 2010) provides a good understanding and background to the origins of copyright, the protected rights and how music rights are represented and managed and their licensing requirements.

A decade might have passed since his article and these fundamentals and principles remain as relevant today.

The following two international conventions have established the basis for the existence, representation and licensing of music copyright:

Berne Convention of 1886 - Established common copyright amongst several nations for the protection of literary and artistic works (which includes musical works).

Rome Convention 1961 - Established common copyright for performers, producers of phonograms and broadcasting organisations.

The World Intellectual Property Organisation (WIPO - www.wipo.int) has 164 signatory countries, which have based their copyright acts on these two conventions and more recently developed them under the Copyright Treaty 1996 and Performances and Phonograms Treaty 1996.

These have led to more specific copyright development initiatives like the Digital Millennium Copyright Act 1998 in the US and the EU Copyright Directive 2001.

If you want to gain some more detailed insight into music rights and copyright law, the UK music rights organisation PRS for Music (www.prsformusic.com) has a comprehensive document searchable under 'Introduction to Copyright Law'. This is written in relation to UK copyright law but it provides good understanding and insight in the subject matter relevant to copyright in most territories.

Restricted activities which require to be licensed

Nearly every nation state will have its own copyright act which will have been developed to meet the key WIPO treaties.

There are differences between copyright acts, both in respect of the rights granted to creators, the way these can be licensed and managed and the way the laws have been defined and implemented.

However, broadly (and in summary) this is what they do:

- Gives creators the exclusive right to their creation.
- Covers a range of forms (e.g. literary, dramatic, musical, artistic, sound recording, films, etc.).
- Creators control a bundle of rights (e.g. the right to copy, adapt, issue, rent, lend, broadcast and publicly perform the work etc.).
- Requires these rights to be licensed and licence fees paid.

Which music rights and who owns them

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The fundamentals of this have not changed and for a piece of music to be provided as inflight entertainment both mechanical rights and performing rights need to be licensed in relation to any activity which is a restricted activity under copyright law and in relation to each piece of music used on each onboard service and on each aircraft.

A record label will own (and/or administer) both the mechanical and performing rights of the artists' sound recording of a song/composition. A music publisher will own (and/or administer) the rights in the composition.

These rights will be administered and licensed either directly with the rights owner or via a collective music rights organisation on behalf of multiple rights owners. There are international networks of affiliate organisations which aggregate representation and licensing of rights, covering millions of works.

So, where the music being sourced is from a piece of recorded media, licences are required from both the record label and the music publisher.

There are some limited caveats and exceptions in relation to requiring a licence, for example, music which has fallen out of copyright protection or where there are licensing exceptions under the copyright act of a particular territory, but the "rule" is:

- A licence will be required for:
 - The use of the musical work;
 - The use of the sound recording from the record label;
 - For all mechanical and performing right usages;
 - For all territories where the content production and delivery process takes place and the territory of the airline.

Produced by

Iain Kemplay is the founder and Managing Director of Kemplay Consulting, a boutique consultancy offering expertise, insight and solutions to the complex business of international music rights and licensing.

This has included a fascinating insight into the provision of music in inflight entertainment through work with Global Eagle Entertainment.

Kemplay Consulting was accepted as a vendor member of APEX in December last year (2018) and we provide music licensing, strategic use of music and compliance/audit services for the use of music in IFE.

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