

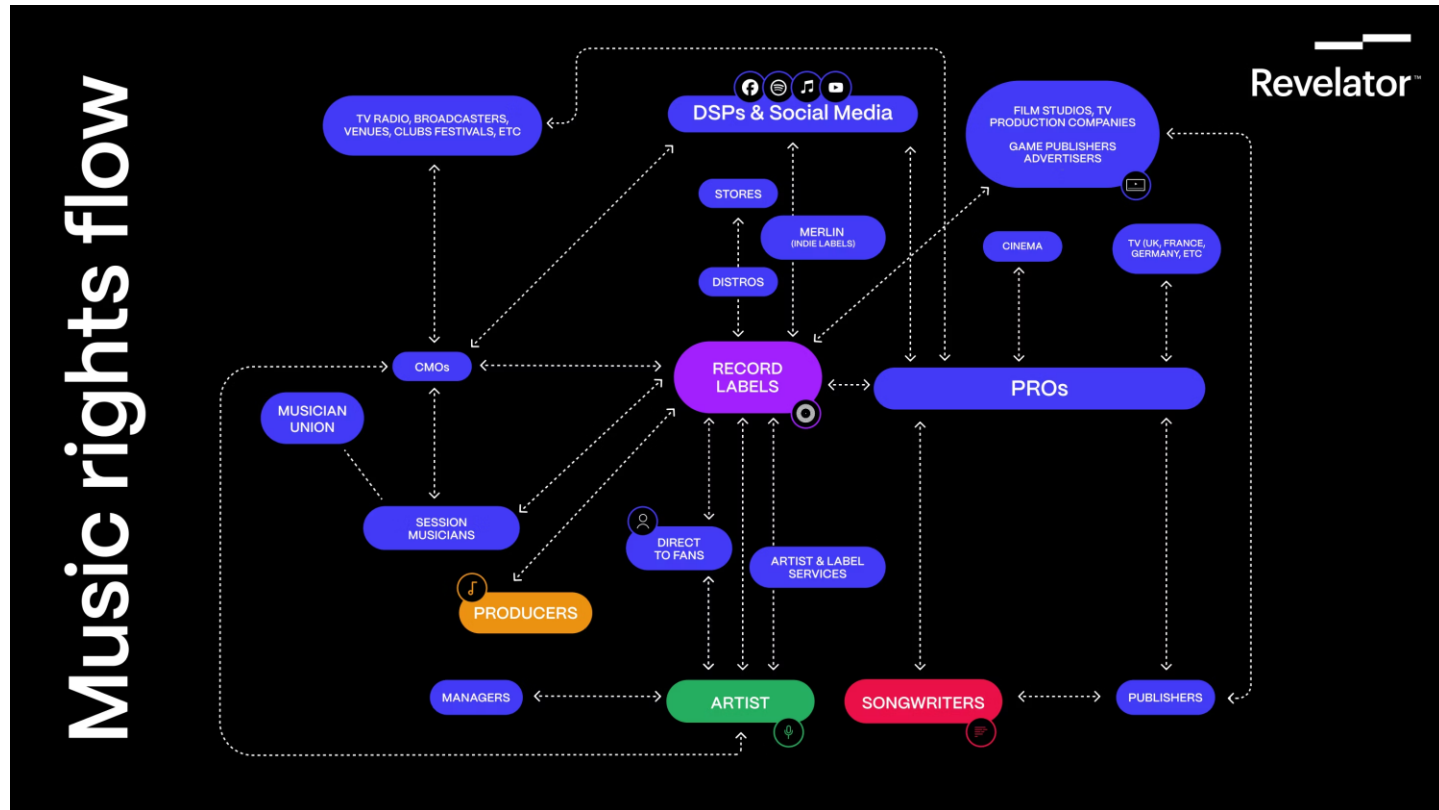
Navigating Legal Risks of Using Music in Social Media

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FKKS Advertising Law Summit

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Music is Complicated...

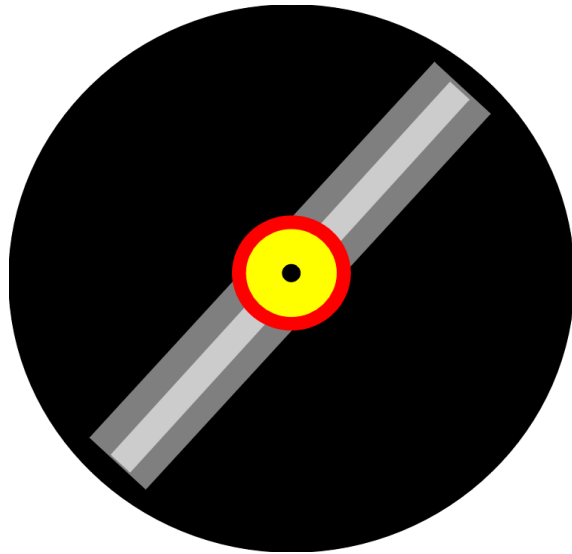


Compositions

- Music and lyrics
- Typically owned by publishers
- Joint works unless the lyricist and composer (and co-authors) agree otherwise
- Writers have co-writers, who have co-writers...
- Synchronization license (Publishing license)



Sound Recordings



- “Works that result from the fixation of a series of musical, spoken, or other sounds ... regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.”
- Typically owned by label
- Master Use License

Doesn't the Platform Give You a License?

- ToS allow regular users to add tracks to *non-commercial posts*
- ToS do *not* allow use of tracks in *commercial posts* (because platforms don't get the rights from labels and publishers)

ACCESS IS NOT



PERMISSION



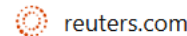
Reuters.com
Bang Energy violated UMG music copyrights in TikTok ads, judge says | Reuters
the #BangEnergy hashtag have garnered nearly 18 billion views.

US FASHION RETAILER PACSUN SUED BY WMG FOR ALLEGED INFRINGEMENT OF 290+ WORKS IN TIKTOK AND INSTAGRAM POSTS

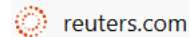
The Copyright Crackdown Continues: Sony Music Sues Ofra Cosmetics Over Influencer and Brand Videos

Music Publishers Call 'Foul' on Sports Teams and Leagues

UNIVERSAL MUSIC SUES CHILI'S RESTAURANT CHAIN OWNER OVER ALLEGED COPYRIGHT INFRINGEMENT IN SOCIAL MEDIA ADS



Reuters.com
Sony Music sues University of Southern California over social media ads | Reuters



Reuters.com
Sony Music ends US legal battle with Marriott over song use in ads | Reuters

According to the lawsuit, Sony Music warned Marriott starting in 2020 that social media posts on...



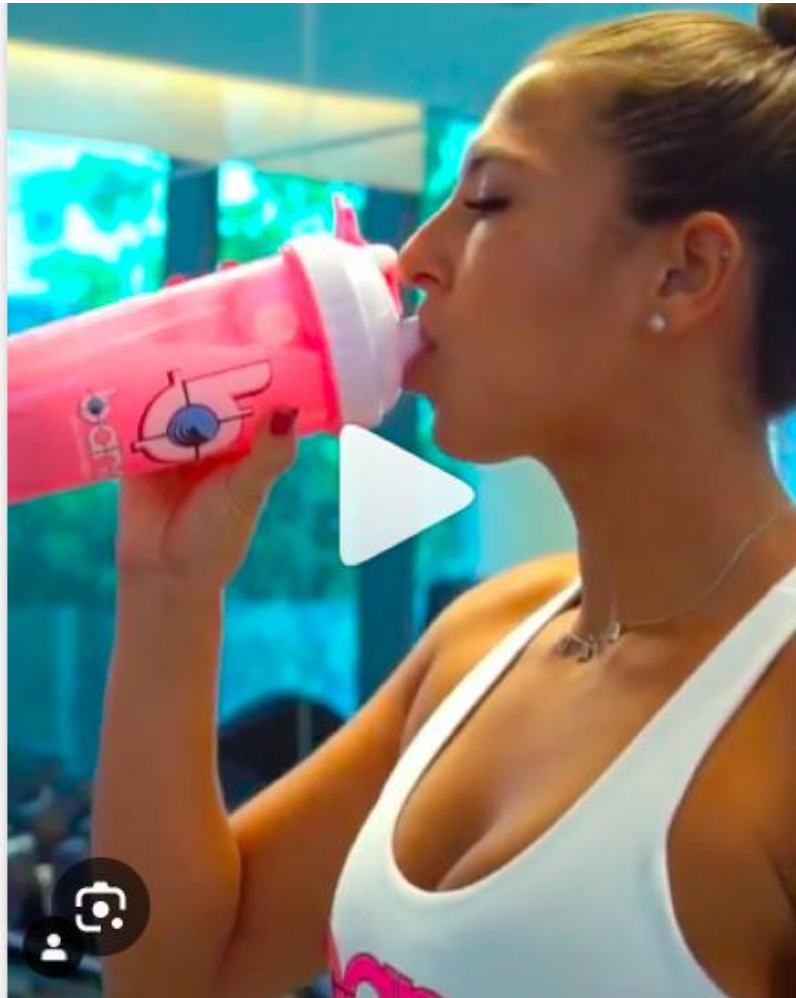
NEWS SONY MUSIC SUES RETAIL GIANT DSW OVER 'MASSIVE' INFRINGEMENT OF RECORDINGS IN SOCIAL MEDIA ADS

Lawsuit marks the latest against DSW Designer Shoe Warehouse, after Warner Music sued the company in May

SONY MUSIC SUES \$1BN-VALUED FITNESS BRAND GYMSHARK FOR INFRINGING 297 RECORDINGS IN ADS

Frankfurt Kurnit Klein + Selz PC

Universal v. Bang Energy



nataagataa • Follow



nataagataa Getting my workout in with the help of @BangEnergy

In my bomb outfit
@BangRevolution.Apparel
Follow inventor of bang
@BangEnergy.CEO

#BangEnergy #EnergyDrink

2w



757,226 views

JULY 14

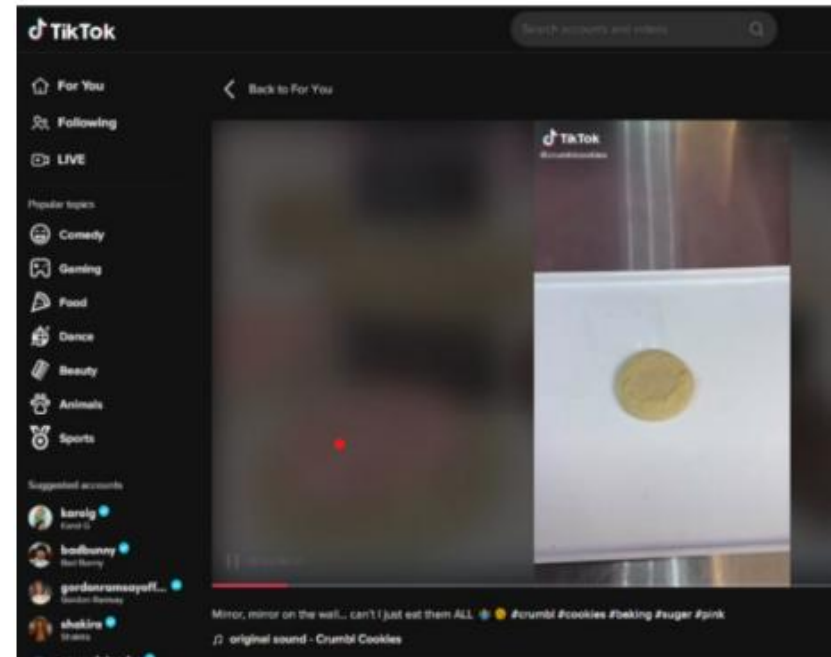
Add a comment...

Post

CLE Code: Music

Warner v. Crumbl

- WMG filed copyright infringement lawsuit in Utah against Crumbl Cookies for use of 159 tracks (Taylor Swift, Beyoncé, Ariana Grande, Bruno Mars, Coldplay, etc.) in TikTok and Instagram videos posted by brand and influencers.
- WMG sought jury trial, permanent injunction, and statutory damages that could total up to \$150,000 per violation - potential damages near **\$24 million**.
- Currently in discovery



Atlantic Recording Corp. et al. v. Crumbl, LLC, No. 2:25-cv-00316 (D. Utah 2025)

Sony v. USC

- Sony Music filed a copyright infringement lawsuit in SDNY against USC for the unlicensed use of 170+ sound recordings (including works by Beyoncé, Britney Spears, Michael Jackson, AC/DC, Harry Styles, Mariah Carey, and others) in 250+ promotional videos posted on TikTok, Instagram, Facebook, and YouTube by USC-controlled athletics and brand accounts.
- Sony sought jury trial, permanent injunction, and statutory damages of up to \$150,000 per work, plus fees and costs. With 170+ recordings at issue - potential damages **of \$40 million**.
- Early litigation / pre-trial



Sony Music Ent. v. Univ. of S. Cal., No. 1:25-cv-02042-GHW (S.D.N.Y. Mar. 11, 2025)

Beware of the Commercial Library

Some platforms have commercial libraries, but ...

- Some marketers think the tracks *suck*
- Platforms make *no promises* of non-infringement
- Commercial uses outside the platform are not permitted and no rights are granted
- Tracks are *crowdsourced*, which should make you worry
- Platforms position themselves granting limited permission, not as a licensor standing behind you in the event of a claim

Accept Confirmation and post video?

The Music Usage Confirmation will be accepted if you choose to post this video.

[Music Usage Confirmation >](#)

Cancel Post video

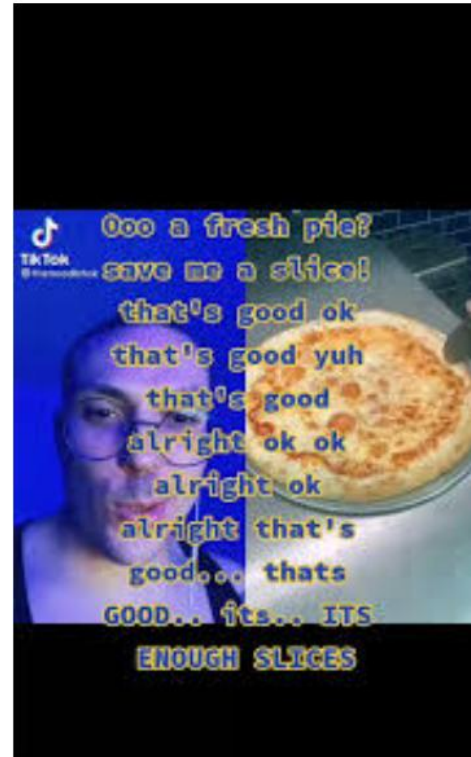
Music Usage Confirmation

By checking this box, you confirm that (A) you own all of the rights to the music included in this video; or (B) the music is in the public domain; or (C) you have permission from all necessary rights holders to use the music on the TikTok platform. If you cannot confirm (A) or (B) or (C), any music included in this video will be muted.

Activision v. Fantano

- Activision filed suit against Plaintiff who demanded money from, and threatened to sue, those who used the popular audio clip
- The sound was made available through the TikTok audio library and was available as a “commercial sound”

“This dispute is a textbook example of how intellectual property law can be misused by individuals to leverage unfair cash payments.”



Activision Publishing Inc v. Anthony Fantano, 2:23CV05989 (C.D. Cal. 2023)

So What Do You Do?

1. Decide: Is the *brand comfortable* allowing creators to use music/trending sounds from *commercial libraries*? Access does not mean permission!
2. Run through a common-sense checklist:
 - Does sound include a *voice* (esp. of a recognizable)?
 - Does it seem like a *sample* from movie, TV, sound recording, commercial, etc.?
 - Don't *share content between platforms*, since the music/sounds are not cleared to go from platform to platform in this way

3. Update your Talent Contracts

- “Talent will only use audio from *approved commercial libraries or other properly licensed sources* in any content publicly disseminated hereunder. Talent further acknowledges and agrees that *access to audio on a digital platform does not necessarily mean such audio is cleared* for use when posting on Client’s behalf.”
- Update postcards with free product where people might post: “And if you include any music or sounds, please *only use audio from approved commercial libraries or other properly licensed sources.*”

4. Employ the Risk-o-Meter

- | | |
|---------------|--|
| Low Risk | <ul style="list-style-type: none">• Obtaining permission from owner of the composition and the master and from everyone performing on the track, if the music does not include other copyrightable content or elements (e.g., samples) and the track is also toggled on by the platform for your intended use |
| Moderate Risk | <ul style="list-style-type: none">• Using the platform's commercial music library.<ul style="list-style-type: none">• But (!) pay attention to:<ul style="list-style-type: none">• Use off platform• Tracks / sounds uploaded by users• Obvious infringement signs |
| High Risk | <ul style="list-style-type: none">• Using (without permission) a track from a non-commercial library on a platform• Uploading an unlicensed track to the platform for use by you and others• Hiring influencers or others to use music not cleared for commercial purposes |

Thank you!



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This outline is a discussion in summary form and may not address all applicable issues or be relevant to all situations. It is not intended to be legal advice. Please consult your Legal/Compliance Dept. for advice.